

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia

APRIL TERM, 1931

No. 5429

22

THOMAS WILLIAMS, APPELLANT,

vs.

DAVID BURNET, COMMISSIONER OF INTERNAL
REVENUE,

AND

No. 5430

HENRY K. S. WILLIAMS, APPELLANT,

vs.

DAVID BURNET, COMMISSIONER OF INTERNAL
REVENUE.

APPEAL FROM THE BOARD OF TAX APPEALS.

FILED JUNE 15, 1931.

PRINTED JULY 23, 1931.

Court of Appeals of the District of Columbia

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Court of Appeals of the District of Columbia

No. 5429.

THOMAS WILLIAMS, Appellant,

vs.

DAVID BURNET, Commissioner of Internal Revenue,

and

No. 5430.

HENRY K. S. WILLIAMS, Appellant,

vs.

DAVID BURNET, Commissioner of Internal Revenue.

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Docket No. 22452.

THOMAS WILLIAMS

vs.

COMMISSIONER OF INT. REV.

For Taxpayer: J. L. Andrews, Esq., R. Kemp Slaughter, Esq., Hugh C. Bickford, Esq.

For Commissioner: J. L. Backstrom, Esq.

Docket Entries.

1927.

Jan. 8. Petition received and filed. Taxpayer notified.

“ 10. Copy of petition served on General Counsel.

Mar. 11. Answer filed by G. C.

“ 29. Copy of answer served on taxpayer—Gen. Cal.

Aug. 9. Application for order to take deposition filed by taxpayer.

“ 16. Order to take depositions signed and filed. Both sides notified.

1927.

Sept. 16. Deposition of Thomas Williams filed. Copy served on G. C. 9-16-27.

1929.

Mar. 13. Hearing set 4-23-29.

Apr. 12. Motion to place on Reserve Cal. filed by taxpayer. 4-13-29. Granted.

Nov. 14. Hearing set 1-14-30.

1930.

Jan. 2. Motion for continuance to Feb. 14, 1930 filed by taxpayer—1-11-30. Granted.

“ 11. Notice of the appearance of Hugh C. Bickford, attorney for taxpayer filed.

“ 11. Notice of appearance of R. Kemp Slaughter, attorney for taxpayer filed.

“ 29. Motion to consolidate with 45814 and 44252 filed by taxpayer. 1-31-30. Granted.

“ 29. Motion to produce filed by taxpayer.

“ 31. Order that respondent produce certain documents at hearing entered.

Feb. 6. Motion for continuance to 2-20-30 filed by taxpayer. 2-11-30. Granted and set for hearing 2-20-30.

“ 20. Hearing had before Charles P. Smith, Div. 5, on the merits. Submitted. Petitioner's brief due in 60 days. Respondent's brief due 30 days after. Reply brief 15 days after respondent's brief.

Mar. 1. Transcript of hearing Feb. 20, 1930, filed.

Apr. 11. Brief filed by taxpayer.

“ 12. Copy of brief served on G. C.

May 20. Motion for extension to June 21, 1930, to file brief filed by G. C. 5-21-30. Granted.

June 21. Brief filed by G. C.

July 3. Order that time for filing petitioner's briefs be extended to July 15, 1930, entered.

“ 15. Reply brief filed by taxpayer.

“ 17. Copy of brief served on G. C.

Oct. 28. Findings of fact and opinion rendered, Chas. P. Smith, Div. 5. Judgment will be entered for the respondent.

2

Oct. 30. Decision entered, Chas. P. Smith, Div. 5.

- 1931.
- Mar. 26. Stipulation of venue filed.
- “ 26. Petition for review by Ct. of Aps. of D. C. with assignments of error filed by taxpayer.
- “ 26. Proof of service filed.
- Apr. 30. Stipulation to consolidate with dkts. 45814 and 44252 for appeal to the Court of Appeals of D. C. filed.
- May 19. Motion for enlargement of time to June 15, 1931, to prepare evidence and transmit record filed by taxpayer.
- “ 21. Order for enlargement of time to June 15, 1931, for preparation of evidence and delivery of record *sur* petition for review entered.
- June 1. Præcipe with proof of service thereon filed.
- “ 1. Agreed statement of evidence lodged.
- “ 1. Motion to transmit original exhibits to the Court of Appeals filed by both parties.
- “ 3. Agreed statement of evidence approved and ordered filed.
- “ 15. Certified copy of order from Court of Appeals of D. C. to have original exhibits 1 and 1A produced at argument of the cause filed.

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Docket No. 44252.

HENRY K. S. WILLIAMS, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Appearances:

For Petitioner: James L. Andrews, C. P. A.; R. Kemp Slaughter, Esq., Hugh C. Bickford, Esq.

For Respondent: L. A. Luce, Esq., J. L. Backstrom, Esq.

Docket Entries.

1929.

- May 9. Petition received and filed; taxpayer notified. Fee paid.
- May 10. Copy of petition served on General Counsel.
- June 8. Amended petition filed by taxpayer (1). 4 copies rec'd 6/19/29.

1929.

- June 20. Copy of amended petition served on General Counsel.
- June 24. Answer filed by General Counsel.
- June 25. Copy of answer served on taxpayer; assigned to General Calendar.
- June 28. Answer to amended petition filed by General Counsel. Copy served 6/29/29.

1930.

- Jan. 29. Notice of appearance of R. Kemp Slaughter and Hugh C. Bickford as counsel for taxpayer filed.
- Jan. 29. Motion to consolidate with dockets 22452 and 45814 for hearing on Feb. 17, 1930 filed by taxpayer. Jan. 31, 1930 granted.
- Jan. 29. Notice to produce filed by taxpayer.
- Jan. 31. Order to produce entered.
- Feb. 6. Motion for continuance to Feb. 20, 1930 filed by taxpayer. See 22452. 2/11/30 granted and set for hearing 2/20/30.
- Feb. 20. Hearing had before Mr. Smith, Division 5, on merits. Submitted. Petitioner's brief due 60 days; respondent 30 days for reply and petitioner 15 days for reply to respondent.
- Mar. 1. Transcript of hearing of Feb. 20, 1930 filed.
- Apr. 11. Brief filed by taxpayer. See 22452.
- Apr. 12. Copy of brief served on General Counsel.
- May 20. Motion for extension to 6/21/30 to file brief filed by General Counsel. See 22453. 5/21/30. Granted.
- June 21. Reply brief filed by General Counsel.
- July 3. Order entered enlarging time to July 15, 1930 for filing petitioner's reply brief.
- July 15. Reply brief filed by taxpayer.
- July 17. Copy of brief served on General Counsel.
- Oct. 28. Findings of fact and opinion rendered—Chas. P. Smith, Division 5. Judgments will be entered for respondent.
- 4 Oct. 30. Decision entered—Chas. P. Smith, Division 5.

1931.

- Mar. 26. Stipulation of venue filed.
- Mar. 26. Petition for review by Court of Appeals of D. C., with assignments of error filed by taxpayer.
- Mar. 26. Proof of service filed.

1931.

- Apr. 30. Stipulation to consolidate with 22452 and 45814 filed.
- May 19. Motion for enlargement of time to 6/15/31 to prepare and transmit record filed by taxpayer.
- May 21. Order enlarging time to June 15, 1931 for preparation of evidence and delivery of record *sur* petition for review entered.
- June 1. Motion to submit original exhibits to District Court of Appeals. Filed by taxpayer.
- June 1. Agreed statement of evidence lodged.
- June 1. Agreed præcipe filed.
- June 3. Agreed statement of evidence approved and ordered filed.
- “ 15. Certified copy of order from Court of Appeals of D. C. to have original exhibits 1 and 1A produced at argument of the cause filed.

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Docket No. 45814.

THOMAS WILLIAMS, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Appearances:

For Petitioner: James L. Andrews, C. P. A., R. Kemp Slaughter, Esq., Hugh C. Bickford, Esq.

For Respondent: J. L. Backstrom, Esq., L. A. Luce, Esq.

Docket Entries.

1929.

- Sept. 23. Petition received and filed. Taxpayer notified. Fee paid.
- Sept. 24. Copy of petition served on General Counsel.
- Oct. 24. Answer filed by General Counsel.
- Nov. 1. Copy of answer served on taxpayer—General Calendar.

1930.

- Jan. 29. Notice of appearance of R. Kemp Slaughter and Hugh C. Bickford as counsel for taxpayer filed.
- Jan. 29. Motion to consolidate with dockets 22452 and 44252 for hearing on Feb. 17, 1930 filed by taxpayer. 1/31/30 granted.
- Jan. 29. Notice to produce filed by taxpayer.

1930.

- Jan. 31. Order that Commissioner produce certain documents entered.
- Feb. 6. Motion to continue hearing to Feb. 20, 1930 filed by taxpayer. 2/11/30 granted to 2/20/30.
- Feb. 20. Hearing had before Mr. Smith, Division 5. Petitioner's brief due in 60 days, Commissioner's brief due 30 days thereafter, and 15 days after Commissioner's brief for petitioner's reply brief.
- Mar. 1. Transcript of hearing of Feb. 20, 1930 filed.
- Apr. 11. Brief filed by taxpayer. See 22452. Copy served 4/12/30.
- May 20. Motion for extension to 6/21/30 to file brief filed by General Counsel. See 22452. 5/21/30 granted.
- June 21. Reply brief filed by General Counsel. See 22452.
- July 3. Order granting petitioner an extension to July 15, 1930 to file brief entered.
- July 15. Reply brief filed by taxpayer. 7/17 copy served.
- Oct. 28. Findings of fact and opinion rendered—Mr. Smith, Division 5. Judgments will be entered for the Commissioner.
- Oct. 30. Decision entered—Chas. P. Smith, Division 5.

1931.

- Mar. 26. Stipulation of venue filed.

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- Mar. 26. Petition for review by Court of Appeals of D. C., with assignments of error filed by taxpayer.
- Mar. 26. Proof of service filed.
- Apr. 30. Stipulation to consolidate with dockets 22452 and 44252 filed.
- May 19. Motion for enlargement of time to 6/15/31 to prepare and transmit record filed by taxpayer.
- May 21. Order enlarging time to June 15, 1931 for preparation of evidence and delivery of record entered.
- June 1. Agreed statement of evidence lodged.
- June 1. Motion to transmit original exhibits to Court of Appeals filed by taxpayer.
- June 1. Agreed *præcipe* filed.
- June 3. Agreed statement of evidence approved and order filed.
- “ 15. Certified copy of order from Court of Appeals of D. C. to have original exhibits 1 and 1A produced at argument of the cause filed.

7 Filed Jan. 8, 1927, U. S. Board of Tax Appeals.

United States Board of Tax Appeals.

Docket No. 22452.

THOMAS WILLIAMS, 220 Eleventh Avenue, New York, N. Y.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Petition.

The above named taxpayer hereby appeals from the determination of the Commissioner of Internal Revenue set forth in his deficiency letter (symbols IT:PA:PYA:60D) dated January 5, 1927 and as the basis of his appeal sets forth the following:

A. The taxpayer is a resident of the State of New York, with his principal place of business at 220 Eleventh Avenue, New York City.

B. The deficiency letter (a copy of which is attached) was mailed to the taxpayer on or about January 5, 1927 and states a deficiency of \$21,213.36.

C. The taxes in controversy are income and profits taxes for the calendar years 1921, 1922 and 1924 and are more than \$10,000.00, to wit, \$13,930.33.

D. The determination of tax contained in the said deficiency letter is based upon the following error:

The Commissioner erred in disallowing deductions
8 taken by the taxpayer from taxable income for the
years 1921, 1922 and 1924 on account of legal fees
and expenses paid by the taxpayer in connection with proceedings during those years relating to certain real property formerly owned by the taxpayer which was taken by condemnation by the City of New York in the year 1919, such deductions being in the following amounts for the years noted:

Year 1921.....	\$8,585.39
Year 1922.....	8,822.00
Year 1924.....	18,111.85

E. The taxpayer relies upon the following facts in support of the assignments of error: During the year 1919 real property theretofore owned by the taxpayer was condemned by the City of New York and title thereto passed from the taxpayer to the said City in accordance with such proceedings, completely divesting the taxpayer of any interest in said property. Such real property so taken over by the said City had been theretofore held and utilized by the taxpayer solely for business purposes, being waterfront property, situated on Staten Island, N. Y., and adapted principally for use in connection with manufacturing and transportation industries.

Subsequently, the taxpayer's claim against the said City for reimbursement on account of damages sustained by him through such condemnation was submitted to the proper judicial authority and ruled upon in due course. Thereafter, exception to such award was taken on behalf of the City of New York and the determination thus made was appealed from. These proceedings continued during the years 1921, 1922 and 1924 and have not yet been concluded.

During the said years, it was necessary and expedient for the taxpayer to expend the amounts deducted by him
9 in his tax returns, as above noted for the proper and adequate protection of his rights growing out of his prior ownership of the real property so condemned. Said expenditures were made at various times and in varying amounts during the said years in payment of fees for legal services and for sundry other items connected with such proceedings. During the said years, the taxpayer had no interest as owner or otherwise in the said real property and the expenditures referred to herein had no relation to such real property. Said payments were made in connection with the claim of the taxpayer against the City of New York for compensation for damages suffered by reason of the condemnation and taking of taxpayer's property and as such were ordinary and necessary expenses incurred in connection with his business.

Taxpayer's income tax returns for the years 1921, 1922 and 1924 were made upon the basis of cash receipts and disbursements.

Wherefore the taxpayer respectfully prays that this Board may hear his appeal and determine that the amounts

paid by him for legal fees and expenses in the several years, as noted above, are properly deductible from taxable income of the year in which paid.

J. L. ANDREWS,
For the Taxpayer,
350 Madison Avenue, New York, N. Y.

10 STATE OF NEW YORK,
County of New York, ss:

Thomas Williams, being duly sworn says that he is the taxpayer named in the foregoing petition; that he has read the said petition and is familiar with the statements therein contained, and that the facts therein stated are true and correct to the best of his knowledge, information and belief.
(Sgd.) THOMAS WILLIAMS.

Sworn to before me this 7th day of January 1927.
(Sgd.) JAMES H. MARTIN.
Notary Public.

New York Co. Clerk's No. 392.
New York Register's No. 8280.
My commission expires March 30, 1928.

11 (Copy.)

Treasury Department, Washington.

IT:PA:PYA:60D.

January 5, 1927.

Mr. Thomas Williams,
220 11th Avenue,
New York, New York.

SIR:

The determination of your income tax liability for the years 1921 to 1924, inclusive, as set forth in office letter dated December 10, 1926, has been changed as the result of the information submitted to disclose an aggregate deficiency in tax of \$21,213.36 for these years. The changes made are shown in the statement attached.

In accordance with the provisions of Section 274 of the Revenue Act of 1926, you are allowed 60 days from the

date of mailing of this letter within which to file a petition for the redetermination of this deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the Board within the 60-day period, not counting Sunday as the sixtieth day.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the final decision on such petition has been made, the unpaid amount of the assessment must be paid upon notice and demand from the Collector of Internal Revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute a waiver of your right to file a petition with the United States Board of Tax Appeals on the inclosed Form A, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:PA:PYA:60D:ARM. In the event that you acquiesce in a part of the determination, the waiver should be executed with respect to the items to which you agree.

Respectfully,

D. H. BLAIR,
Commissioner.

By — — —,
Assistant to the Commissioner.

Inclosures: Statement, Form A, Form 882.

NF:RS:1.

12

(Copy.)

Statement.

IT:PA:PYA:60D.

January 5, 1927.

In re Mr. Thomas Williams, 220 11th Avenue, New York,
New York.

Year.	Deficiency in tax.
1921 (waiver filed)	\$2,314.45
1922	8,993.38
1923	3,570.23
1924	6,335.30
Total	<u>\$21,213.36</u>

The audit as made by the examining officer in his original report dated May 19, 1926, has been reviewed and approved by this office with the following exceptions:

1923.

The examining officer took a deduction of \$26.90 representing the amount of tax paid at the source on tax-free covenant bonds from \$77,592.51, tax previously assessed, whereas that amount had already been deducted on the return in arriving at the amount of \$77,892.51. The adjustment of this item decreases the deficiency in tax from \$3,597.13 as shown in the report to \$3,570.23.

1924.

As the result of the conference held in this office on December 22, 1926, and continued December 23, 1926, your distributive interest of the partnership earnings of Icabod T. Williams and Sons for the year 1924 has been decreased by \$1,557.88 to \$75,803.04, disclosing a net income of \$138,880.25, and a deficiency of \$6,335.30. This change is due to the allowance to the partnership of a deduction of \$9,736.71 representing compensation insurance payable.

Careful consideration has been given to your claim for the deduction during the years 1921, 1922 and 1924, of the

amounts expended for legal expenses in connection with action taken to secure payment for lands condemned and taken over by the City of New York, but since these expenses are not considered ordinary business expenses, the deductions have not been allowed.

Your attention is directed to Office Decision 591, published in C. B. 3, page 113, in which it was held that the cost of mandamus proceedings in connection with certain property which had been condemned could not be taken as

13 a deduction in computing the net income of the taxpayer for the year in which expended. Any costs received at date of settlement should be considered a replacement of the amount expended in the collection of a due debt, and need not, therefore, be included in gross income.

Payment of the tax should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

NF:RS:1.

14 Filed Mar. 11, 1927, United States Board of Tax Appeals.

United States Board of Tax Appeals.

Docket No. 22452.

THOMAS WILLIAMS, 220 11th Avenue, New York, N. Y., Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Answer.

The respondent, by his attorney, A. W. Gregg, General Counsel, Bureau of Internal Revenue, for answer to the petition of this taxpayer, filed January 8, 1927, admits and denies as follows:

A. Admits the statements and allegations contained in introductory paragraph and paragraph No. A of the petition filed herein.

B. Admits the allegations contained in paragraph No. B of the petition filed herein.

C. Admits the allegations contained in paragraph No. C of the petition filed herein.

D. Denies that the respondent erred in determining or computing petitioner's deficiency for either the calendar year 1921, 1922 or 1924 as alleged in corresponding paragraph of the petition filed herein.

E. Having insufficient information upon which to base an admission, the respondent denies all the allegations contained in corresponding paragraph of the petition filed herein, and further denies the alleged expenditures for legal services for the taxpayer during the years involved herein are ordinary and necessary business expenses and deductible under the Revenue Acts of 1921 or 1924.

14a Wherefore it is prayed that upon final hearing of this appeal, the petitioner's deficiencies for the following years be redetermined to be as follows:

1921	\$2,314.45
1922	\$8,993.38
1924	\$6,335.30

A. W. GREGG,

General Counsel, Bureau of Internal Revenue.

Of Counsel:

BRUCE A. LOW,

Special Attorney, Bureau of Internal Revenue.

15 Filed May 9, 1929, U. S. Board of Tax Appeals.

United States Board of Tax Appeals.

Docket No. 44252.

HENRY K. S. WILLIAMS, 220 Eleventh Avenue, New York,
N. Y., Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Petition.

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (IT:AR:-

B-12:RMT:60D) dated May 2, 1929, and as a basis of his proceedings alleges as follows:

1. The petitioner is an individual, his business address being 220 Eleventh Avenue, New York, N. Y.

2. The Notice of Deficiency (copy of which is attached, marked Exhibit A) was mailed to the taxpayer May 2, 1929.

3. The taxes in controversy are income taxes for the calendar years 1924 and 1925 and aggregate \$14,398.97.

4. The determination of tax set forth in said Notice of Deficiency is based upon the following error:

(a) The Commissioner erred in disallowing deductions taken by the taxpayer from taxable income for the years 1924 and 1925 on account of legal fees and expenses paid by the taxpayer in connection with proceedings during those years relating to certain real property formerly owned by the taxpayer which was taken by condemnation by the City of New York in the year 1919, such deductions being in the following amounts for the years noted:

1924	\$47,448.07
1925	5,116.00

5. The taxpayer relies upon the following facts as the basis of this proceeding:

(a) During the year 1919 real property theretofore owned by the taxpayer was condemned by the City of New York and title thereto passed from the taxpayer to the said City in accordance with such proceedings, completely divesting the taxpayer of any interest in said property. Such real property so taken over by the said City had been theretofore held and utilized by the taxpayer solely for business purposes, being waterfront property, situated on Staten Island, N. Y., and adapted principally for use in connection with manufacturing and transportation industries.

(b) Subsequently, the taxpayer's claim against the said City for reimbursement on account of damages sustained by him through such condemnation was submitted to the proper judicial authority and ruled upon in due course. Thereafter, exception to such award was taken on behalf of the City of New York and the determination thus made was appealed from. These proceedings continued through

the years 1921 to 1925, inclusive, and did not result in the payment by the City of New York for the property so condemned until 1927. Legal fees and expenses in connection with such proceedings were paid in each of the years mentioned, as well as in 1928.

(c) During the said years, it was necessary and expedient for the taxpayer to expend the amounts deducted by him in his tax returns, as above noted for the proper and adequate protection of his rights growing out of his prior ownership of the real property so condemned. Said expenditures were made at various times and in varying amounts during the said years in payment of fees for legal services and for sundry other items connected with such proceedings. During the said years, the taxpayer had no interest as owner or otherwise in the said real property and the expenditures referred to herein had no relation to such real property. Said payments were made in connection
17 with the claim of the taxpayer against the City of New York for compensation for damages suffered by reason of the condemnation and taking of taxpayer's property and as such were ordinary and necessary expenses incurred in connection with his business.

Taxpayer's income tax returns for the years 1924 and 1925 were made upon the basis of cash receipts and disbursements.

Wherefore the taxpayer respectfully prays that this Board may hear his appeal and determine that the amounts paid by him for legal fees and expenses in the several years, as noted above, are properly deductible from taxable income of the year in which paid.

J. L. ANDREWS,

For the Taxpayer,

350 Madison Avenue, New York, N. Y.

18 Henry K. S. Williams, being duly sworn, says that he is the taxpayer named in the foregoing petition; that he has read the said petition and is familiar with the statements therein contained, and that the facts therein stated are true and correct to the best of his knowledge, information and belief.

Sworn to before me this — day of —, 1929.

EXHIBIT A.

Copy.

Treasury Department, Washington.

May 2, 1929.

Mr. H. K. S. Williams,
220 11th Avenue,
New York, N. Y.

SIR:

In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the years 1924 and 1925 discloses a deficiency of \$14,398.97, as shown in the statement attached.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the inclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement form will expedite the closing of your return by permitting an early assessment of any deficiencies and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; whereas if no agreement is filed, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,

(Signed)

D. H. BLAIR,
Commissioner,
By C. B. ALLEN,
Deputy Commissioner.

20

Statement.

IT:AR:B-12. RMT-60D.

May 2, 1929.

In re Mr. H. K. S. Williams, 220 11th Avenue,
New York, N. Y.

Tax Liability.

Year	Corrected tax liability.	Tax previously assessed.	Deficiency.
1924	\$13,542.84	\$ 3,304.77	\$10,238.07
1925	36,263.02	32,102.12	4,160.90
Totals .	\$49,805.86	\$35,406.89	\$14,398.97

The report of the Internal Revenue Agent in Charge at New York, New York, covering your tax liability for the years 1924 and 1925, as amended in conference has been reviewed and approved as submitted.

1924.

Net income originally reported \$49,412.78

Add:

1. Capital net gain	\$12,652.00	
2. Bad debt disallowed ...	1,200.00	
3. Legal expenses dis- allowed	47,448.07	61,300.07

Less:

		\$110,712.85
4. Profit from sale		12,652.00

Corrected net income \$98,060.85

Explanation of Changes.

1. Profit of \$12,652.00 reported by you as realized on sale of securities held more than two years has been segregated from ordinary income and taxed at a flat rate of 12½% under Section 208 of the Revenue Act of 1924.

2. Bad debt of \$1,200.00 claimed on loan to J. C. Wilson in 1908 has been disallowed, since the evidence submitted

in connection therewith does not indicate that the loan was good until 1924, but rather that the worthlessness of same was apparent at a much earlier period. Section 214 (a), Revenue Act of 1924.

21 3. Legal expenses of \$47,448.07 claimed in connection with the condemnation of certain water front property by the City of New York, have been disallowed since it is held by this office that such an expense represents an expenditure to be capitalized, and for which reimbursement would be received in the final settlement of the case.

4. This adjustment has been made to reflect the transfer of this amount from ordinary income to capital net gain.

Computation of Tax.

Corrected net income	\$98,060.85
Less:	
Capital net gain	12,652.00
Income subject to surtax	\$85,408.85
Less:	
Dividends	\$98,665.88
Personal exemption	None
	98,665.88
Income subject to normal tax	None
Surtax on \$85,408.85	\$12,096.74
Tax at 12½% on \$12,652.00	1,581.50
Total tax	\$13,678.24
Less:	
Earned income credit	135.40
Total tax assessable	\$13,542.84
Previously assessed	3,304.77
Deficiency	\$10,238.07

22

1925.

Net income originally reported..... \$108,312.51

Add:

1. Interest increased.....	\$443.53	
2. Foreign dividends.....	2,000.00	
3. Contributions disallowed.....	222.19	
4. Legal expenses disallowed....	5,116.00	
		7,781.72
		\$116,094.23

Less:

5. Dividends	\$2,000.00	
6. Taxes increased.....	2,659.73	
		4,659.73
		\$111,434.50

Capital net gain reported.....	\$171,434.82	
Increase in capital net gain.....	7,725.00	
		179,159.82
Total corrected income.....		\$290,594.32

Explanation of Changes.

1. Interest has been adjusted to show the correct amount actually received from bonds containing a tax-free covenant clause and other sources.

2. Dividends from foreign corporations reported originally for surtax purposes only have been included with other income subject to both a normal tax and surtax.

3. Contributions amounting to \$222.19 made to the "Her-rick Testimonial" and "French Contributions" have been disallowed since it was not shown that such contributions were made in accordance with the provisions of Section 214 (a) (10) of the Revenue Act of 1924.

4. See Item 3 of 1924 for explanation as to disallowance of this item.

5. See Item 2 for explanation as to reduction in amount reported as dividends.

6. Taxes allowed as a deduction have been increased by \$2,659.73 to reflect the correct amount deductible on your return.

23

Computation of Tax.

Corrected net income.....	\$290,594.32
Less:	
Corrected capital net gain.....	179,159.82
Income subject to surtax.....	\$111,434.50
Less:	
Dividends	\$106,966.20
Personal exemption.....	None
	106,966.20
Balance subject to normal tax.....	\$4,468.30
Normal tax on \$4,000.00 at 1½%	\$60.00
Normal tax on \$468.30 at 3%	14.05
Surtax on \$111,434.50.....	13,946.90
Tax at 12½% on capital net gain.....	22,394.98
Total tax	\$36,415.93
Less:	
Earned income credit.....	\$17.51
Tax paid at source.....	135.40
	152.91
Total tax assessable	\$36,263.02
Tax previously assessed.....	32,102.12
Deficiency	\$4,160.90

In compliance with the request of Mr. James L. Andrews, your authorized attorney, that a final letter of determination be mailed in the event this office approved the report of the revenue agent as amended in conference, you are advised that this action has been taken and a copy of this letter furnished Mr. Andrews, in accordance with the authority conferred upon him in the power of attorney on file in this office.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

24 U. S. Board of Tax Appeals, Filed June 8, 1929

United States Board of Tax Appeals.

Docket No. 44252.

HENRY K. S. WILLIAMS, 220 Eleventh Avenue, New York,
N. Y., Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Amended Petition.

The above-named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (IT:AR:B-12:RMT:60D) dated May 2, 1929, and as a basis of his proceedings alleges as follows:

1. The petitioner is an individual, his business address being 220 Eleventh Avenue, New York, N. Y.

2. The Notice of Deficiency (copy of which is attached, marked Exhibit A) was mailed to the taxpayer May 2, 1929.

3. The taxes in controversy are income taxes for the calendar years 1924 and 1925 and aggregate \$14,398.97.

4. The determination of tax set forth in said Notice of Deficiency is based upon the following error:

(a) The Commissioner erred in disallowing deductions taken by the taxpayer from taxable income for the years 1924 and 1925 on account of legal fees and expenses paid by the taxpayer in connection with proceedings during those years relating to certain real property formerly owned by the taxpayer which was taken by condemnation by the City of New York in the year 1919, such deductions being in the following amounts for the years noted:

1924	\$47,448.07
1925	5,116.00

5. The taxpayer relies upon the following facts as the basis of this proceeding:

(a) During the year 1919 real property theretofore owned by the taxpayer was condemned by the City of New York and title thereto passed from the taxpayer to the said

City in accordance with such proceedings, completely divesting the taxpayer of any interest in said property. Such real property so taken over by the said City had been therefore held and utilized by the taxpayer solely for business purposes, being waterfront property, situated on Staten Island, N. Y., and adapted principally for use in connection with manufacturing and transportation industries.

(b) Subsequently, the taxpayer's claim against the said City for reimbursement on account of damages sustained by him through such condemnation was submitted to the proper judicial authority and ruled upon in due course. Thereafter, exception to such award was taken on behalf of the City of New York and the determination thus made was appealed from. These proceedings continued through the years 1921 to 1925, inclusive, and did not result in the payment by the City of New York for the property so condemned until 1927. Legal fees and expenses in connection with such proceedings were paid in each of the years mentioned, as well as in 1928.

(c) During the said years, it was necessary and expedient for the taxpayer to expend the amounts deducted by him in his tax returns, as above noted for the proper and adequate protection of his rights growing out of his prior ownership of the real property so condemned. Said expenditures were made at various times and in varying amounts during the said years in payment of fees for legal services and for sundry other items connected with such proceedings. During the said years, the taxpayer had no interest as owner or otherwise in the said real property and the expenditures referred to herein had no relation to such real property.

Said payments were made in connection with the
26 claim of the taxpayer against the City of New York
for compensation for damages suffered by reason of the condemnation and taking of taxpayer's property and as such were ordinary and necessary expenses incurred in connection with his business.

Taxpayer's income tax returns for the years 1924 and 1925 were made upon the basis of cash receipts and disbursements.

Wherefore the taxpayer respectfully prays that this Board may hear his appeal and determine that the amounts paid by him for legal fees and expenses in the several years,

as noted above, are properly deductible from taxable income of the year in which paid.

J. L. ANDREWS,
For the Taxpayer,
350 Madison Avenue, New York, N. Y.

27 Henry K. S. Williams, being duly sworn, says that he is the taxpayer named in the foregoing petition; that he has read the said petition and is familiar with the statements therein contained, and that the facts therein stated are true and correct to the best of his knowledge, information and belief.

HENRY K. S. WILLIAMS.

Sworn to before me this 22nd day of May, 1929.

[SEAL.]

PAUL C. BETTS,
PAUL C. BETTS,
*Vice-Consul of the United States
of America at Paris, France.*

No fee prescribed.

28 United States Board of Tax Appeals, Filed
Jun. 24, 1929.

United States Board of Tax Appeals.

Docket No. 44252.

HENRY K. S. WILLIAMS, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Answer.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in Paragraphs 1, 2 and 3 of the petition.

4. Denies that he erred in determining the tax set forth in said notice of deficiency, and further denies that he erred as alleged in Paragraph 4(a) of the petition.

5. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 5(a) to 5(c) of the petition, and therefore denies the same.

6. Denies generally and specifically each and every allegation contained in taxpayer's petition not hereinbefore admitted, qualified or denied.

Wherefore it is prayed that the taxpayer's appeal be denied.

(Signed)

C. M. CHAREST,
C. H. CHAREST,

General Counsel, Bureau of Internal Revenue.

Of Counsel:

L. A. LUCE,

Special Attorney, Bureau of Internal Revenue.

vh-k 6-22-29.

29 United States Board of Tax Appeals, Filed Jun. 28,
1929.

United States Board of Tax Appeals.

Docket No. 44252.

HENRY K. S. WILLIAMS, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

Answer to Amended Petition.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the amended petition of the above-named taxpayer, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in Paragraphs 1, 2 and 3 of the amended petition.

4. Denies that he erred in determining the tax set forth in said notice of deficiency, and further denies that he erred as alleged in Paragraph 4(a) of the amended petition.

5. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained

in Paragraphs 5(a) to 5(c) of the amended petition and therefore denies the same.

6. Denies generally and specifically each and every allegation contained in taxpayer's amended petition not hereinbefore admitted, qualified or denied.

Wherefore it is prayed that the taxpayer's appeal be denied.

(Signed)

C. M. CHAREST,
C. M. CHAREST,

General Counsel, Bureau of Internal Revenue.

Of Counsel:

L. A. LUCE,

Special Attorney, Bureau of Internal Revenue.

vh-k 6-26-29.

30 Filed Sept. 23, 1929, U. S. Board of Tax Appeals.

United States Board of Tax Appeals.

Docket No. 45814.

THOMAS WILLIAMS, 220 Eleventh Avenue, New York, N. Y.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Petition.

The above-named taxpayer hereby appeals from the determination of the Commissioner of Internal Revenue set forth in his deficiency letter (symbols IT:AR:B-12:RMT-60D) dated July 31, 1929, and as the basis of his appeal sets forth the following:

A. The taxpayer is a resident of the State of New York, with his principal place of business at 220 Eleventh Avenue, New York City.

B. The deficiency letter (a copy of which is attached) was mailed to the taxpayer on or about July 31, 1929, and states a deficiency of \$1,408.89.

C. The taxes in controversy are income and profits taxes for the calendar years 1925 and 1926, being less than \$10,000.00, to wit, \$1,408.89.

31 D. The determination of tax contained in the said deficiency letter is erroneous in the following respects: The Commissioner erred in disallowing deductions taken by the taxpayer from taxable income for the years 1925 and 1926 on account of fees and expenses paid by the taxpayer in connection with legal proceedings relating to certain real property formerly owned by the taxpayer which was taken by condemnation by the City of New York in the year 1919, such deductions being in the following amounts for the years noted:

Year 1925	\$5,116.01
“ 1926	303.42

E. The taxpayer relies upon the following facts in support of the assignment of error: During the year 1919 real property theretofore owned by the taxpayer was condemned by the City of New York and title thereto passed from the taxpayer to the said City in accordance with such proceedings, completely divesting the taxpayer of any interest in said property. Such real property so taken over by the said City had been theretofore held and utilized by the taxpayer solely for business purposes, being waterfront property, situated on Staten Island, N. Y., and adapted principally for use in connection with manufacturing and transportation industries.

Subsequently, the taxpayer’s claim against the said City for reimbursement on account of damages sustained by him through such condemnation was submitted to the proper judicial authority and ruled upon in due course. Thereafter, exception to such award was taken on behalf of the City of New York and the determination thus made
32 was appealed from. These proceedings continued during the years herein referred to, being concluded in 1927.

During the said years it was necessary and expedient for the taxpayer to expend the amounts deducted by him in his tax returns, as above noted, for the proper and adequate protection of his rights growing out of his former ownership of the real property so condemned. Said expenditures were made at various times and in varying amounts during the said years in payment of fees for legal services and for sundry other items connected with such proceedings. During the said years the taxpayer had no interest as owner or

otherwise in the said real property, and the expenditures referred to herein had no relation to the ownership of such real property. Said payments were made in connection with the claim of the taxpayer against the City of New York for compensation for damages suffered by reason of the condemnation and taking of taxpayer's property and as such were ordinary and necessary expenses incurred in connection with his business.

Taxpayer's income tax returns for the years 1925 and 1926 were made upon the basis of cash receipts and disbursements.

Wherefore the taxpayer respectfully prays that this Board may hear his appeal and determine that the amounts paid by him for legal fees and expenses in the several years, as noted above, are properly deductible from taxable income of the year in which paid.

(Signed)

J. L. ANDREWS,

For the Taxpayer,

350 Madison Avenue, New York, N. Y.

33 STATE OF NEW YORK,
 County of New York, ss:

Thomas Williams, being duly sworn, says that he is the taxpayer named in the foregoing petition; that he has read the said petition and is familiar with the statements therein contained, and that the facts therein stated are true and correct to the best of his knowledge, information and belief.

(Signed)

THOMAS WILLIAMS.

Sworn to before me this 19th day of September, 1929.

(Signed)

JAMES H. MARTIN,

[SEAL.]

Notary Public.

New York Co. Clerk's No. 100.

New York Register's No. 0-11.

My commission expires March 30, 1930.

Copy.

Treasury Department, Washington.

IT: AR: B-12. RMT-60D.

July 31, 1929.

Mr. Thomas Williams,
220 Eleventh Avenue,
New York, New York.

SIR:

In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the years 1925 and 1926 discloses a deficiency of \$1,408.89, as shown in the statement attached.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the inclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT: C: P-7. The signing of this agreement form will expedite the closing of your return by permitting an early assessment of any deficiencies and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; whereas if no agreement is filed, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,

ROBT. H. LUCAS,
Commissioner.

By ————,
Deputy Commissioner.

35

Statement.

IT: AR: B-12. RMT-60D.

July 31, 1929.

In re Mr. Thomas Williams, 220 Eleventh Avenue, New
York, New York.

Tax Liability.

Years.	Corrected tax liability.	Tax previously assessed.	Deficiency.
1925	\$15,541.59	\$14,208.59	\$1,333.00
1926	26,360.61	26,284.72	75.89
Totals	\$41,902.20	\$40,493.31	\$1,408.89

The report of the Internal Revenue Agent in Charge at New York, New York, covering your tax liability for the years 1925 and 1926, as amended in conference, has been reviewed and approved as submitted.

In accordance with the agreement signed by you consenting to the immediate assessment of a portion of the deficiency for each year as disclosed by the above-mentioned report, you are informed that such action has been taken, and that the amounts shown herein as deficiencies for 1925 and 1926 represent that portion of the original deficiencies to which you did not agree to the immediate assessment.

1925.

Net income as previously corrected.....	\$117,637.89
Add: 1. Legal expenses disallowed.....	5,116.01
Total income subject to surtax.....	\$122,753.90
Less: Capital net loss.....	32,522.52
Net income.....	\$90,231.38

Explanation of Changes.

1. Legal expenses of \$5,116.01 claimed in connection with the condemnation of certain property by the City of New York in 1919 have been disallowed, in accordance with the

adjustments made in previous years on your income tax returns where similar deductions were disallowed by the Bureau, for the reason that they represent items of capital expenses such as would fall within the provisions of Section 214 (a) (1) of the Revenue Act of 1924.

36 Computation of Tax.

Net income subject to surtax \$122,753.90

Less:

Dividends \$42,354.27

Personal exemption 3,500.00 45,854.27

Balance subject to normal tax \$76,899.63

Normal tax at $1\frac{1}{2}\%$ on \$4,000.00 \$60.00

Normal tax at 3% on \$4,000.00 120.00

Normal tax at 5% on \$68,899.63 3,444.98

Surtax on \$122,753.90 16,210.78

Tax at $12\frac{1}{2}\%$ on capital net loss of \$32,522.52 .. (4,065.32)

Total tax \$15,770.44

Less:

Earned income credit \$206.25

Income tax paid at source 22.60

228.85

Total tax assessable \$15,541.59

Tax previously assessed 14,208.59

Deficiency \$1,333.00

1926.

Net income as previously corrected \$151,052.22

Add: Legal expenses disallowed 303.42

Corrected net income \$151,355.64

Explanation of Change.

1. See Item 1 of 1925 for explanation.

37 Computation of Tax.

Corrected net income	\$151,355.64
Less:	
Dividends	\$50,241.10
Personal exemption	3,500.00
	53,741.10
Balance subject to normal tax	\$97,614.54
Normal tax at 1½% on \$4,000.00	\$60.00
Normal tax at 3% on \$4,000.00	120.00
Normal tax at 5% on \$89,614.54	4,480.73
Surtax on \$151,355.64	21,931.13
Total tax	\$26,591.86
Less:	
Earned income credit	\$206.25
Tax paid at source	25.00
	231.25
Tax assessable	\$26,360.61
Previously assessed	26,284.72
Deficiency	\$75.89

A copy of this letter has been furnished your representative, Mr. James L. Andrews, 350 Madison Avenue, New York, New York, in accordance with authority conferred upon him in power of attorney now on file in this office.

A consent is on file extending the statutory period to December 31, 1929, for making assessment of any deficiency against the year 1925.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

arz-1.

38 United States Board of Tax Appeals, Filed Oct. 24,
1929.

United States Board of Tax Appeals.

Docket No. 45814.

THOMAS WILLIAMS, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Answer

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

A, B, and C. Admits the allegations contained in Paragraphs A, B, and C of the petition.

D. Denies that he erred in determining the tax set forth in said notice of deficiency, and further denies that he erred as alleged in Paragraph D of the petition.

E. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph E of the petition and therefore denies the same.

F. Denies generally and specifically each and every allegation contained in taxpayer's petition not hereinbefore admitted, qualified or denied.

Wherefore it is prayed that the taxpayer's appeal be denied.

(Signed)

C. M. CHAREST,
C. M. CHAREST,

General Counsel, Bureau of Internal Revenue.

Of Counsel:

L. A. LUCE,

*Special Attorney, Bureau
of Internal Revenue.*

k 10-21-29.

39 United States Board of Tax Appeals.

Docket Nos. 22452, 44252, 45814. 21 B. T. A. —.

THOMAS WILLIAMS, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

HENRY K. S. WILLIAMS, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Promulgated October 28, 1930.

A true copy. Teste:

[Seal U. S. Board of Tax Appeals.]

B. D. GAMBLE,

Clerk U. S. Board of Tax Appeals.

Certain amounts paid by the petitioners in litigation of claims for compensation for property condemned for public uses by the City of New York, *held* not deductible in the years when paid.

Hugh C. Bickford, Esq., James L. Andrews, C. P. A., and R. Kemp Slaughter, Esq., for the petitioners.
J. L. Backstrom, Esq., for the respondent.

These proceedings are for redetermination of deficiencies for the calendar years 1921, 1922, 1924, 1925, and 1926, as follows:

Thomas Williams.

Docket No.	Year.	Deficiency.
22452.....	1921	\$2,314.45
	1922	8,993.38
	1924	6,335.30
45814.....	1925	1,333.00
	1926	75.89

Docket No.	Year.	Deficiency.
44252.....	1924	\$10,238.07
	1925	4,160.90

The issues being identical for each of the years involved with respect to each petitioner, that is, whether certain expenses of litigation in connection with condemnation proceedings are deductible in the taxable years, the proceedings were consolidated for hearing and opinion.

Findings of Fact.

The petitioners are brothers and are residents of the State of New York. They maintain an office at 220 Fifth Avenue, New York City.

At the beginning of the year 1919, the petitioners were the owners of considerable real estate situated along the water front on Staten Island, N. Y. They had owned the property for many years and had used portions of it in carrying on various business enterprises. A part of the property was occupied under lease expiring in 1923 by the firm of Ichabod T. Williams & Sons, a copartnership, hereinafter referred to as the Copartnership, of which Thomas Williams was a partner. The Copartnership was engaged in the wholesale lumber business specializing in the importation of high-grade lumber. Another part of the property was under lease, expiring in 1928, to the Edgewater Saw Mills Corporation, hereinafter referred to as the Corporation, of which the petitioners were stockholders. Other portions of the property had been transferred by the petitioners to the Stapleton Dock and Warehouse Corporation, a holding corporation, hereinafter referred to as the Holding Company, the capital stock of which

41 was all owned in equal shares by the petitioners.

On July 1, 1919, the Commissioners of the Sinking Fund of New York City instituted proceedings to condemn for public use all of the above described property, together with other adjacent property, in connection with the improvement of the water front and harbor facilities of New York City. Pursuant to authority granted by the court, the Commissioners of the Sinking Fund on September 25, 1919, adopted a resolution reading in part as follows:

Resolved, that, pursuant to law, the Commissioners of the Sinking Fund hereby direct that title to the property to be acquired for the improvement of the waterfront and harbor of The City of New York, between Simonson Avenue, Clifton, and Arrietta Street, Tompkinsville, Borough of Richmond, as more particularly hereinafter described, shall vest in The City of New York on Saturday, October 11, 1919, and all of the rights, title and interest of any and all of the owners or persons interested in the said wharf property, rights, terms, easements and privileges, lands under water or uplands, shall cease and determine and be extinguished at such time.

Title to the property was taken over by the city in accordance with the above resolution on October 11, 1919, and on October 28, 1919, notice was given for the owners and parties in interest to file with the court their claims for compensation. Thereafter, and during the year 1919, claims for compensation for the condemned property were filed by the petitioners individually, by the Copartnership, the Holding Company, and the Corporation.

Prior to 1919, both the Copartnership and the Corporation had made considerable improvements upon the condemned properties out of their own funds.

42 The petitioners engaged the law firm of O'Brien, Boardman, Parker and Fox to represent them in the prosecution of their claims.

The adjudication of the claims by the courts extended over a period of several years. On March 13, 1925, the Supreme Court of Kings County rendered judgment awarding the petitioners compensation in the amount of \$3,792,090.74. Appeal from this award was taken by the City of New York to the Appellate Division, which, during the year 1926, rendered its decision approving the amount of the award as fixed by the lower court. See 215 App. Div. 204, 438. Appeal was then taken to the Court of Appeals of the State of New York, which, on July 20, 1927, rendered final decision affirming the award as fixed by the trial court. See 246 N. Y. 1; 157 N. E. 911.

Counsel for the petitioners in the prosecution of their claims for compensation taken for the property under the condemnation proceedings desired that the Copartnership,

the Corporation, and the Holding Company make no separate contentions with respect to damages to which they might be entitled as a result of improvements which they had placed upon the property which had been taken over by the City. Accordingly, the claims for compensation were limited to those pressed by the petitioners. The petitioners had entered into an understanding with the other parties in interest that such parties would be compensated for out of any amounts which might be paid to the petitioners for damages in respect of the property taken.

43 During the years 1921, 1922, 1924, 1925, and 1926, the petitioners made expenditures in connection with the prosecution of the above claims, representing attorneys' fees, appraisals, expert witness fees, etc., as follows:

Year.	Thomas Williams.	Henry K. S. Williams.
1921	\$8,585.39	\$.....
1922	8,822.00	.....
1924	18,111.85	18,111.84
1925	5,116.01	5,116.00
1926	303.42	.....

For 1921, 1922, and 1926, Henry K. S. Williams paid an equal amount in connection with the prosecution of the above claims but deficiencies determined by the Commissioner against Henry K. S. Williams for that year, if any, are not involved in these proceedings.

Thomas Williams carried on no business during the years 1921 to 1926, inclusive, except in connection with the firm of Ichabod T. Williams & Sons, of which he was a member. Henry K. S. Williams had retired from business prior to 1924, and during the years 1925 and 1926 was living abroad.

In his income-tax returns for 1921, 1922, 1924, 1925 and 1926, Thomas Williams claimed as deductions from gross income the amounts paid by him in connection with the prosecution of his claims against the City of New York, set out above, and in his individual income-tax returns for 1924, and 1925, Henry K. S. Williams claimed as deductions from gross income in connection with the prosecution of these claims \$47,448.07 for 1924, and \$5,116 for 1925, although the amounts actually paid by Henry K. S. Williams in those

44 years was, as above set forth, only \$18,111.84 for 1924, and \$5,116 for 1925. The reason for claiming a larger deduction for 1924 than the amount paid was that Henry K. S. Williams had claimed no deductions for the years prior to 1924, and claimed the right to deduct in that year the entire amount paid by him in 1924 and prior years. The petitioners kept their records on the cash receipts and disbursements basis and filed their tax returns upon the same basis. In the determination of the deficiencies involved herein the Commissioner disallowed the deductions of the amounts paid in connection with the prosecution of the above referred to claims.

Opinion.

SMITH: The petitioners contend that all of the disputed amounts expended by them during the taxable years involved in connection with the adjudication of the claims for compensation for the property taken over by the City of New York are deductible from gross income as business expenses of those years. Henry K. S. Williams contends before the Board, however, that the only amount he is entitled to deduct from gross income of 1924 is the actual amount expended by him in that year, namely, \$18,111.84, and not \$47,448.07 as claimed on his return. The respondent opposes the deductions on the grounds—

(1) That the expenditures were not ordinary and necessary expenses incurred in carrying on a trade or business;

(2) That they were made in advance of or in proof of title and are therefore capital expenditures. (See art. 293, Regulations 62; art. 292, Regulations 65);

45 (3) That even if considered as business expenses none of the amounts are deductible in the petitioners' individual returns since they were expended in part on behalf of other parties in interest and no proper basis for segregation of the amounts paid out in behalf of the petitioners' individual interests is provided.

The applicable statute is section 214 of the Revenue Acts of 1921 and 1924, which provides in part:

(a) That in computing net income there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; * * *

In *Kornhauser v. United States*, 276 U. S. 145, the question before the court was whether a practicing attorney who had been in partnership was entitled to deduct from gross income legal expenses paid by him in defending a suit brought by a former partner who contended that certain fees received by Kornhauser were in connection with business which had been done by the partnership while the former partner was a member of the firm. The alleged fees in fact consisted of stock in a corporation acquired subsequently to the dissolution of the partnership and not for services performed during its existence. The defense to the suit was successful and the Supreme Court held that the amount paid was a necessary expense incurred in connection with petitioner's business within the meaning of section 214 (a) (1) of the Revenue Act of 1918. The court stated:

46 In the Appeal of *F. Meyer & Brother Co.*, 4 B. T. A. 481, the Board of Tax Appeals held that a legal expenditure made in defending a suit for an accounting and damages resulting from an alleged patent infringement was deductible as a business expense.

The basis of these holdings seems to be that where a suit or action against a taxpayer is directly connected with, or, as otherwise stated (*Appeal of Backer*, 1 B. T. A. 214, 216), proximately resulted from, his business, the expense incurred is a business expense within the meaning of section 214 (a), subd. 1, of the act. These rulings seem to us to be sound and the principle upon which they rest covers the present case. If the expense had been incurred in an action to recover a fee from a client who refused to pay it, the character of the expenditure as a business expense would not be doubted. * * *

In the proceedings at bar we are unable to perceive any close relationship between the amounts paid by the petitioners in the prosecution of their claims against the City of New York and any business carried on by the petitioners during the taxable years. We can not find that Henry K.

S. Williams was engaged in any business during the years 1924 and 1925. He had retired from business and was living abroad. The only business that Thomas Williams was engaged in appears to have been in connection with the partnership of Ichabod T. Williams & Sons. The amounts paid by Thomas Williams in connection with the prosecution of the petitioners' claims were not charged upon the books of the partnership and, so far as the record shows, were not intimately connected with the business of the partnership. The respondent's contention is that the amounts paid by the petitioners in the prosecution of their claims against the City of New York were in the nature of capital expenditures and that as such they at most are deductible from the amount of the compensation paid by the

47 City of New York to the petitioners upon the adjudication of their claims in 1927. Whether this be the correct theory for disallowing the deductions in the years under review it is unnecessary for us to decide.

As pointed out by the Circuit Court of Appeals for the Second Circuit in *Commissioner v. Marshall Field*, decided July 7, 1930, expenses of the sort before the court in that case can be allowed as a deduction only if the expense is clearly within "some statutory deduction." It further stated:

* * * We are to assume that the added security to Field, his power of immediate disposition and enjoyment over what in any case was eventually his, was a new asset, from whose value the fee must be deducted. Such refinements are too speculative to be workable in application; expenses of this sort must fall within those general costs of protecting one's property for which the statute makes no allowance.

We are of the opinion that the amounts claimed as deductions in the proceedings at bar are not "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." There is no other provision of the statute under which the deductions may logically be claimed. The disallowance of them by the respondent is therefore sustained.

Judgments will be entered for the respondent.

48 United States Board of Tax Appeals, Washington.

Docket No. 22452.

THOMAS WILLIAMS, Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Decision.

Pursuant to the Board's findings of fact and opinion, promulgated October 28, 1930, it is

Ordered and decided: That there are deficiencies as follows:

Year.	Deficiency.
1921	\$2,314.45
1922	8,993.38
1924	6,335.30

Enter.

(Signed) CHARLES P. SMITH,
Member United States Board of Tax Appeals.

Entered Oct. 30, 1930.

A true copy. Teste:

[Seal U. S. Board of Tax Appeals.]

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

49 United States Board of Tax Appeals, Washington.

Docket No. 44252.

HENRY K. S. WILLIAMS, Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Decision.

Pursuant to the Board's findings of fact and opinion, promulgated October 28, 1930, it is

Ordered and decided: That there are deficiencies of \$10,238.07 and \$4,160.90 for the years 1924 and 1925, respectively.

Enter.

(Signed)

CHARLES P. SMITH,

Member United States Board of Tax Appeals.

mvw.

Entered Oct. 30, 1930.

A true copy. Teste:

[Seal U. S. Board of Tax Appeals.]

B. D. GAMBLE,

Clerk U. S. Board of Tax Appeals.

50 United States Board of Tax Appeals, Washington.

Docket No. 45814.

THOMAS WILLIAMS, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Decision.

Pursuant to the Board's findings of fact and opinion, promulgated October 28, 1930, it is

Ordered and decided: That there are deficiencies of \$1,333.00 and \$75.89 for the years 1925 and 1926, respectively.

Enter.

(Signed)

CHARLES P. SMITH,

Member United States Board of Tax Appeals.

mvw.

Entered Oct. 30, 1930.

A true copy. Teste:

[Seal U. S. Board of Tax Appeals.]

B. D. GAMBLE,

Clerk U. S. Board of Tax Appeals.

51 United States Board of Tax Appeals, Filed Mar. 26,
1931.

United States Board of Tax Appeals.

Docket Nos. 22452, 45814.

THOMAS WILLIAMS, Petitioner,

v.

DAVID BURNET, Commissioner of Internal Revenue,
Respondent.

*Agreement for Review by the Court of Appeals for the
District of Columbia.*

It is hereby stipulated and agreed, by and between the parties hereto, by their respective attorneys, that the decisions of the United States Board of Tax Appeals entered in the above entitled causes, dated October 30, 1930, finding deficiencies in income and surtaxes against the petitioner, may be reviewed by the Court of Appeals of the District of Columbia. This agreement is made under and pursuant to the provisions of Section 1002 (d) of the Revenue Act of 1926.

R. KEMP SLAUGHTER,
HUGH C. BICKFORD,

Attorneys for the Petitioner.

C. M. CHAREST,

General Counsel, Bureau of Internal Revenue,

Attorney for the Respondent.

52 United States Board of Tax Appeals, Filed Mar. 26,
1931.

United States Board of Tax Appeals.

Docket No. 44252.

H. K. S. WILLIAMS, Petitioner,

v.

DAVID BURNET, Commissioner of Internal Revenue,
Respondent.

*Agreement for Review by the Court of Appeals for the
District of Columbia.*

It is hereby stipulated and agreed, by and between the parties hereto, by their respective attorneys, that the de-

cision of the United States Board of Tax Appeals entered in the above entitled cause, dated October 30, 1930, finding deficiencies in income and surtaxes against the petitioner, may be reviewed by the Court of Appeals of the District of Columbia. This agreement is made under and pursuant to the provisions of Section 1002 (d) of the Revenue Act of 1926.

R. KEMP SLAUGHTER,
HUGH C. BICKFORD,

Attorneys for the Petitioner.

C. M. CHAREST,

General Counsel, Bureau of Internal Revenue,

Attorney for the Respondent.

53 Filed March 26, 1931, U. S. Board of Tax Appeals.

In the Court of Appeals of the District of Columbia.

Docket Nos. 22452 & 45814.

THOMAS WILLIAMS, Petitioner,

v.

DAVID BURNET, Commissioner of Internal Revenue,
Respondent.

To the Honorable the Judges of the United States Court of Appeals of the District of Columbia:

Thomas Williams files this petition in pursuance of the provisions of Section 1001 of the Act of Congress approved February 26, 1926 entitled the Revenue Act of 1926, for the review of a decision of the U. S. Board of Tax Appeals, entered on October 30, 1930, and in support thereof respectfully shows to this honorable court as follows:

I.

Statement of the Nature of the Controversy.

On January 5, 1927 the Commissioner of Internal Revenue, respondent herein, acting in pursuance of the provisions of Section 274 of the Revenue Act of 1926, mailed to the petitioner a notice finally determining deficiencies in the income and sur-taxes against petitioner as follows:

Calendar year 1921	.....	\$2,314.45
“ “ 1922	.....	8,993.38
“ “ 1923	.....	3,570.23
“ “ 1924	.....	6,335.30

54 Thereafter on January 8, 1927, the petitioner duly filed a petition for the redetermination of said deficiencies, with the U. S. Board of Tax Appeals, which proceeding was docketed under number 22452.

On July 31, 1929 the Commissioner of Internal Revenue mailed to petitioner notice finally determining deficiencies as follows:

Calendar year 1925	.....	\$1,333.00
“ “ 1926	.....	75.89

On September 23, 1929 petitioner duly filed a petition requesting the redetermination of said deficiencies, with the U. S. Board of Tax Appeals, which proceeding was docketed under number 45814.

On January 1, 1930 the Board of Tax Appeals entered its order consolidating said proceedings.

The petitions filed with the Board assigned as the grounds for such proceedings the allegation that the Commissioner had erred in refusing to allow as a deduction from the gross income of petitioner, amounts expended by him in such years in connection with litigation to determine compensation payable by the City of New York for real estate which had been condemned. The facts as pleaded, proved, and in most instances found by the Board are as follows:

The petitioner is and was a resident of the State of New York and maintained an office at 220 Eleventh Avenue, New York, N. Y. At the beginning of the year 1919 and for some years prior thereto the petitioner and his brother, H. K. S. Williams were the owners of real estate situated along the water front on Staten Island, New York. This property was essentially business property and was not suitable for residential purposes nor had the petitioner and his brother ever intended to use it for other than business purposes. A part of the property was occupied under lease by the copartnership Ichabod T. Williams & Sons, of which the petitioner was a partner. The copartnership was en-

55 gaged in the wholesale lumber business, specializing in the importation of high grade lumber. Another part of the property was under lease to the Edge-

water Saw Mills Corporation, hereinafter referred to as the corporation, of which the petitioner was a stockholder. Other portions of the property were occupied by the Stapleton Dock & Warehouse Corporation, hereinafter referred to as the holding company, all of the capital stock of which was owned in equal shares by the petitioner and his brother.

On July 1, 1919, the Commissioners of the Sinking Fund of New York City instituted proceedings to condemn for public use all of the above described property, together with other adjacent property, in connection with the improvement of the water front and harbor facilities of New York City. Pursuant to authority granted by the court, the Commissioners of the Sinking Fund on September 25, 1919, adopted a resolution reading in part as follows:

Resolved, that, pursuant to law, the Commissioners of the Sinking Fund hereby direct that title to the property to be acquired for the improvement of the water front and harbor of the City of New York, between Simonson Avenue, Clifton, and Arietta Street, Tompkinsville, Borough of Richmond, as more particularly hereinafter described, shall vest in The City of New York on Saturday, October 11, 1919, and all of the rights, title and interest of any and all of the owners or persons interested in the said wharf property, rights, terms, easements and privileges, lands under water or uplands, shall cease and determine and be extinguished at such time.

Title to the property was taken over by the city in accordance with the above resolution on October 11, 1919, and on October 28, 1919, notice was given for the owners and parties in interest to file with the court their claims for compensation. Thereafter, and during the year 1919, claims for compensation for the condemned property were filed by the petitioner and his brother, by the Copartnership, the Holding Company, and the Corporation.

56 Prior to 1919, both the Copartnership and the Corporation had made some improvements upon the condemned properties out of their own funds.

The petitioner and his brother engaged the law firm of O'Brien, Boardman, Parker and Fox to represent them in the prosecution of their claims.

The adjudication of the claims by the courts extended over a period of several years. On March 13, 1925, the Supreme Court of Kings County rendered judgment

awarding the petitioners compensation in the amount of \$3,792,090.74. Appeal from this award was taken by the City of New York to the Appellate Division, which, during the year 1926, rendered its decision approving the amount of the award as fixed by the lower court. See 215 App. Div. 204, 438. Appeal was then taken to the Court of Appeals of the State of New York, which, on July 20, 1927, rendered final decision affirming the award as fixed by the trial court. See 246 N. Y. 1; 157 N. E. 911.

Counsel for the petitioners in the prosecution of their claims to determine the amount of compensation for the property taken under the condemnation proceedings desired that the Copartnership, the Corporation, and the Holding Company make no separate contentions with respect to damages to which they might be entitled as a result of improvements which they had placed upon the property which had been taken over by the City. Accordingly, the claims for compensation were limited to those pressed by the petitioner and his brother.

During the years 1921, 1922, 1924, 1925 and 1926, the petitioner made expenditures in connection with the prosecution of the above claims, representing attorneys' fees, appraisals, expert witness' fees, etc., as follows:

57	Calendar year 1921	\$8,585.39
	Calendar year 1922	8,822.00
	Calendar year 1924	18,111.85
	Calendar year 1925	5,116.01
	Calendar year 1926	303.42

The amounts thus paid by petitioner represented one-half of the total expenses of such litigation, the other half having been paid by his brother in the same amount and in the same years. In his income tax returns for 1921, 1922, 1924, 1925 and 1926 petitioner claimed as deductions from gross income, the amounts paid by him in each year as set out above. The petitioner and his brother kept their records on the cash receipts and disbursements basis and filed their tax returns upon the same basis. In the determination of the deficiencies involved herein the Commissioner of Internal Revenue disallowed the deductions of the amounts thus claimed.

Evidence was taken by deposition and hearing was held before a member of the Board of Tax Appeals on Feb-

ruary 20, 1930. On October 28, 1930, the Board of Tax Appeals promulgated its findings of fact and a written opinion, which held that the expenditures in question "are not ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business" and are therefore not deductible from gross income as claimed by the petitioner. Thereafter, on October 30, 1930 the Board of Tax Appeals entered its final decision approving deficiencies as determined by the Commissioner in the following amounts:

Calendar year 1921	.....	\$2,314.45
" " 1922	.....	8,993.38
" " 1924	.....	6,335.30
" " 1925	.....	1,333.00
" " 1926	.....	75.89

58

II.

Declaration Naming Court of Review.

The parties hereto having entered into a stipulation in writing duly filed with the Clerk of the United States Board of Tax Appeals and made a part of the record herein, that the Court of Appeals of the District of Columbia hear and determine this appeal and petitioner being aggrieved by the said final decision of the U. S. Board of Tax Appeals, respectfully requests a review of said decision by the Court of Appeals of the District of Columbia.

III.

Assignments of Error.

The petitioner says that in the record and proceedings of the said U. S. Board of Tax Appeals in the above entitled cause and in the final decision entered therein, there is manifest error and for error petitioner assigns the following:

1. The Board of Tax Appeals erred in that there is no evidence to support its finding that certain expenses of litigation to determine compensation for property condemned were not "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business."

2. The Board of Tax Appeals erred in holding that the aforesaid expenditures are not deductible from the gross income of petitioner in accordance with the provisions of Section 214 (a) (1) of the Revenue Act of 1921.

3. The finding of the Board that such expenditures were not business expenses properly deductible from gross income is contrary to law in that it is contrary to the uncontradicted evidence submitted in behalf of the petitioner.

59 4. The Board of Tax Appeals erred in entering its final decision finding deficiencies as aforesaid resulting from the ruling that such expenditures were not deductible from gross income.

Wherefore your petitioner prays that this Court may review said findings of fact, opinion and decision and reverse and set aside the same and that the Clerk of the U. S. Board of Tax Appeals be directed to transmit and deliver to the Clerk of this court certified copies of all and every of the documents necessary and material to the presentation and consideration of the foregoing petition for review as required by the rules of said court and the statutes made and provided.

(Signed)

THOMAS WILLIAMS,
Petitioner.

R. KEMP SLAUGHTER,
HUGH C. BICKFORD,

Attorneys for the Petitioner,
815 Fifteenth St., Washington, D. C.

60 STATE OF NEW YORK,
County of New York, ss:

Personally appeared before me, Thomas Williams, who, being duly sworn, says that he is the petitioner and taxpayer named in the foregoing petition and as such has signed the same. That he has read the same and is familiar with the statements therein contained, which statements are true to the best of his knowledge and belief.

(Signed)

THOMAS WILLIAMS.

Subscribed and sworn to before me this 19th day of March, 1931.

(Signed)

[SEAL.]

JAMES H. MARTIN,
Notary Public.

Notary Public.

New York Co. Clerk's No. 74.

New York Register's No. 2-M-47.

My commission expires March 30, 1932.

61 United States Board of Tax Appeals, Filed Mar. 26, 1931.

United States Court of Appeals for the District of Columbia.

Docket Nos. 22452 & 45814.

THOMAS WILLIAMS, Petitioner,

v.

DAVID BURNET, Commissioner of Internal Revenue,
Respondent.

*Notice of Filing Petition for Review of Decision of the
U. S. Board of Tax Appeals.*

To David Burnet, Commissioner of Internal Revenue, the
above-named respondent, and to C. M. Charest, General
Counsel, Bureau of Internal Revenue, his attorney.

SIRS:

Please take notice that on this 26th day of March 1931
the petitioner herein, Thomas Williams, will present to the
United States Board of Tax Appeals and file with the Clerk
thereof, a petition, copy of which is annexed hereto, for the
review by the United States Court of Appeals for the Dis-
trict of Columbia, of the final orders and decisions of the
said Board entered on October 30, 1930, in the proceedings
docketed in the records of the Board under Numbers 22452
and 45814.

HUGH C. BICKFORD,

Attorney for Thomas Williams,

815 Fifteenth Street N. W., Washington, D. C.

Washington, D. C., March 26, 1931.

Copy of the within notice and copy of petition for review
is hereby accepted this 26th day of March, 1931.

C. M. CHAREST,

General Counsel, Bureau of Internal Revenue,

Attorney for the Respondent.

62 Filed Mar. 26, 1931, U. S. Board of Tax Appeals.

In the Court of Appeals of the District of Columbia.

Docket No. 44252.

H. K. S. WILLIAMS, Petitioner,

v.

DAVID BURNET, Commissioner of Internal Revenue,
Respondent.

To the Honorable the Judges of the United States Court of Appeals of the District of Columbia:

H. K. S. Williams filed this petition in pursuance of the provisions of Section 1001 of the Act of Congress approved February 26, 1926 entitled the Revenue Act of 1926, for the review of a decision of the U. S. Board of Tax Appeals, entered on October 30, 1930, and in support thereof respectfully shows to this honorable court as follows:

I.

Statement of the Nature of the Controversy.

On May 2, 1929 the Commissioner of Internal Revenue, respondent herein, acting in pursuance of the provisions of Section 274 of the Revenue Act of 1926, mailed to the petitioner a notice finally determining deficiencies in the income and surtaxes due by the petitioner as follows:

Calendar year 1924.....	\$10,238.07
“ “ 1925.....	4,160.90

63 Thereafter on May 9, 1929, the petitioner duly filed a petition for the redetermination of said deficiencies with the U. S. Board of Tax Appeals, which proceeding was docketed under number 44252. An amended petition was filed June 20, 1929.

The petitions filed with the Board assigned as the grounds for such proceeding the allegation that the Commissioner had erred in refusing to allow as a deduction from the gross income of petitioner, amounts expended by him in such years in connection with litigation to determine

compensation payable by the City of New York for real estate which had been condemned. The facts as pleaded, proved, and, in most instances, found by the Board are as follows:

The petitioner is a citizen of the United States and of the State of New York and maintained an office at 220 Eleventh Avenue, New York, N. Y. At the beginning of the year 1919 and for some years prior thereto the petitioner and his brother, Thomas Williams, were the owners of real estate situated along the water front on Staten Island, New York. This property was essentially business property and was not suitable for residential purposes nor had the petitioner and his brother ever intended to use it for other than business purposes. A part of the property was occupied under lease by the copartnership Ichabod T. Williams & Sons, of which the petitioner was a partner. The copartnership was engaged in the wholesale lumber business, specializing in the importation of high grade lumber. Another part of the property was under lease to the Edgewater Saw Mills Corporation, hereinafter referred to as the corporation, of which the petitioner was a stockholder. Other portions of the property were occupied by the Stapleton Dock & Warehouse Corporation, hereinafter referred to as the holding company, all of the capital stock of which was owned in equal shares by the petitioner and his brother.

64 On July 1, 1919, the Commissioners of the Sinking Fund of New York City instituted proceedings to condemn for public use all of the above described property, together with other adjacent property, in connection with the improvement of the water front and harbor facilities of New York City. Pursuant to authority granted by the court, the Commissioners of the Sinking Fund on September 25, 1919, adopted a resolution reading in part as follows:

Resolved, that, pursuant to law, the Commissioners of the Sinking Fund hereby direct that title to the property to be acquired for the improvement of the water front and harbor of the City of New York, between Simonson Avenue, Clifton, and Arietta Street, Tompkinsville, Borough of Richmond, as more particularly hereinafter described, shall vest in the City of New York on Saturday, October 11, 1919, and all of the rights, title and interest of any and all of the owners or persons interested in the said wharf property,

rights, terms, easements and privileges, lands under water or uplands, shall cease and determine and be extinguished at such time.

Title to the property was taken over by the city in accordance with the above resolution on October 11, 1919, and on October 28, 1919, notice was given for the owners and parties in interest to file with the court their claims for compensation. Thereafter, and during the year 1919, claims for compensation for the condemned property were filed by the petitioner and his brother, by the Copartnership, the Holding Company, and the Corporation.

Prior to 1919, both the Copartnership and the Corporation had made some improvements upon the condemned properties out of their own funds.

The petitioner and his brother engaged the law firm of O'Brien, Boardman, Parker and Fox to represent them in the prosecution of their claims.

The litigation of the claims by the courts extended over a period of several years. On March 13, 1925, the Supreme Court of Kings County rendered judgment awarding the petitioners compensation in the amount of \$3,792,090.74. Appeal from this award was taken by the City of New York

65 to the Appellate Division, which, during the year 1926, rendered its decision approving the amount of the award as fixed by the lower court. See 215 App. Div. 204, 438. Appeal was then taken to the Court of Appeals of the State of New York, which, on July 20, 1927, rendered final decision affirming the award as fixed by the trial court. See 246 N. Y. 1; 157 N. E. 911.

Counsel for the petitioner in the prosecution of the claim to determine the amount of compensation for the property taken, desired that the Copartnership, the Corporation, and the Holding Company make no separate contentions with respect to damages to which they might be entitled as a result of improvements which they had placed upon the property which had been taken over by the City. Accordingly, the claims for compensation were limited to those pressed by the petitioner and his brother.

During the years 1924, and 1925, the petitioner made expenditures in connection with the prosecution of the above claims, representing attorneys' fees, appraisals, expert witness' fees, etc., as follows:

Calendar year 1924.....	\$18,111.84
“ “ 1925.....	5,116.00

The amounts thus paid by petitioner represented one-half of the total expenses of such litigation, the other half having been paid by his brother in the same amount and in the same years. In his income tax returns for 1924 and 1925, petitioner claimed as deductions from gross income, the amounts \$47,448.07 and \$5,116.00 respectively, although the amounts paid by him were only \$18,111.84 and \$5,116.00 in those years as set out above. The reason for claiming the larger amount for 1924 was that Henry K. S. Williams had taken no deductions for similar payments prior to 1924 and claimed the right to deduct in that year the entire amount paid in 1924 and prior years. During the course

of the trial below the petitioner admitted that he was
66 entitled to claim only the amounts actually paid in 1924 and 1925, namely \$18,111.84 and \$5,116.00 respectively. The petitioner and his brother kept their records on the cash receipts and disbursements basis and filed their tax returns upon the same basis. In the determination of the deficiencies involved herein the Commissioner of Internal Revenue disallowed the deduction of the amounts thus claimed.

Evidence was taken by deposition and hearing was held before a member of the Board of Tax Appeals, on February 20, 1930. On October 28, 1930, the Board of Tax Appeals promulgated its findings of fact and a written opinion, which held that the expenditures in question “are not ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business” and are therefore not deductible from gross income as claimed by the petitioner. Thereafter, on October 30, 1930 the Board of Tax Appeals entered its final decision approving deficiencies as determined by the Commissioner in the following amounts:

Calendar year 1924.....	\$10,238.07
“ “ 1925.....	4,160.90

II.

Declaration Naming Court of Review.

The parties hereto having entered into a stipulation in writing, duly filed with the Clerk of the U. S. Board of Tax

Appeals and made a part of the record herein, that the Court of Appeals of the District of Columbia may hear and determine this appeal and the petitioner herein being aggrieved by the said final decision of the U. S. Board of Tax Appeals, respectfully requests a review of said decision by the U. S. Court of Appeals of the District of Columbia.

III.

Assignments of Error.

The petitioner says that in the record and proceedings of amounts actually paid in 1924 and 1925, namely \$18,111.84 and \$5,116.00 respectively. The petitioner and his brother kept their records on the cash receipts and disbursements basis and filed their tax returns upon the same basis. In the determination of the deficiencies involved herein the Commissioner of Internal Revenue disallowed the deduction of the amounts thus claimed.

Evidence was taken by deposition and hearing was held before a member of the Board of Tax Appeals, on February 20, 1930. On October 28, 1930, the Board of Tax Appeals promulgated its findings of fact and a written opinion, which held that the expenditures in question "are not ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business" and are therefore not deductible from gross income as claimed by the petitioner. Thereafter, on October 30, 1930 the Board of Tax Appeals entered its final decision approving deficiencies as determined by the Commissioner in the following amounts:

Calendar year 1924	\$10,238.07
" " 1925	4,160.90

II.

Declaration Naming Court of Review

The petitioner, being an inhabitant of the State of New York, within the jurisdiction of the U. S. Circuit Court of Appeals for the Second Circuit and being aggrieved by the aforesaid opinion and final decision of the U. S. Board of Tax Appeals, respectfully requests a review of said decision by the U. S. Circuit Court of Appeals for the Second Circuit.

III.

Assignments of Error.

68 The petitioner says that in the record and proceedings of the said U. S. Board of Tax Appeals in the above entitled cause and in the final decision entered therein, there is manifest error and for error petitioner assigns the following:

1. The Board of Tax Appeals erred in that there is no evidence to support its finding that certain expenses of litigation to determine compensation for property condemned were not "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business".

2. The Board of Tax Appeals erred in holding that the aforesaid expenditures are not deductible from the gross income of petitioner in accordance with the provisions of Section 214 (a) (1) of the Revenue Act of 1921.

3. The finding of the Board that such expenditures were not business expenses properly deductible from gross income is contrary to law in that it is contrary to the uncontradicted evidence submitted in behalf of the petitioner.

4. The Board of Tax Appeals erred in entering its final decision finding deficiencies as aforesaid resulting from the ruling that such expenditures were not deductible from gross income.

Wherefore your petitioner prays that this Court may review said findings of fact, opinion and decision and reverse and set aside the same and that the Clerk of the U. S. Board of Tax Appeals be directed to transmit and deliver to the Clerk of this court certified copies of all and every of the documents necessary and material to the presentation and consideration of the foregoing petition for review as required by the rules of said court and the statutes made and provided.

(Signed)

H. K. S. WILLIAMS,

Petitioner,

(Signed)

By THOMAS WILLIAMS,

Atty.

R. KEMP SLAUGHTER,

HUGH C. BICKFORD,

Attorneys for Petitioner,

815 Fifteenth St., Washington, D. C.

69 STATE OF NEW YORK,
County of New York, ss:

Personally appeared before me, Thomas Williams, who, being duly sworn, says that he is the brother of H. K. S. Williams, the petitioner named in the foregoing petition, that the said H. K. S. Williams is now in Europe and will be out of the United States during all of the time remaining within which the foregoing petition for review must be filed. That deponent holds a Power of Attorney from the said H. K. S. Williams, copy of which is attached hereto, which authorizes him to sign the foregoing petition for and on behalf of the said H. K. S. Williams. Deponent further says that he was associated with the said H. K. S. Williams in all of the transactions mentioned in the foregoing petition for review, and, therefore, has personal knowledge of the facts set forth therein. That he has read the same and the statements contained therein are true to the best of his knowledge and belief.

(Signed)

H. K. S. WILLIAMS,

(Signed)

By THOMAS WILLIAMS,

Atty.

Subscribed and sworn to before me this 19th day of March, 1931.

(Signed)

JAMES H. MARTIN,

[SEAL.]

Notary Public.

Notary Public.

New York Co. Clerk's No. 74.

New York Register's No. 2-M-47.

My commission expires March 30, 1932.

Know all men by these presents:

That I, Henry K. S. Williams, have made, constituted and appointed, and by these presents do make, constitute and appoint Thomas Williams, of Lawrence, Nassau County, New York, my true and lawful attorney, for me and in my name, place and stead to ask, demand, sue for, levy, recover, collect and receive all manner of goods, chattels, debts, duties, rents, sum or sums of money and demands whatsoever due or hereafter to become due and owing, or belonging unto me by any corporation, person or persons whom-

soever, and to give and execute acquittances, receipts, releases or other discharge or discharges for the same, either under seal or otherwise; to draw, make, sign, execute and deliver in my name or in the name of my said attorney, all checks, acknowledgments, agreements and all other instruments in writing of whatever nature as to my said attorney may seem meet; to sign and endorse my name to or upon any check, draft, bill of exchange, or promissory note or other instrument in writing for the payment of money either for deposit to the credit of my account or otherwise; to enter into and take possession of any lands, tenements or hereditaments of mine that may be unoccupied or become vacant or to the possession of which I may be or become entitled, and all and every the real estate of me, the said Henry K. S. Williams, and for me and in my name and to my use to receive and take all or any rents, arrears of rents, issues and profits of all or any of the lands, tenements, hereditaments or any of them and to let the same in such maner as my said attorney shall think proper, and in

71 default of payment of any such rents, arrears of rents, issues or profits, to proceed by suit or suits at law for the recovery thereof or to take such proceedings at law or otherwise with respect thereto as my said attorney shall deem fit; to grant, bargain, and sell, lease, mortgage and convey for cash or credit or both and on such terms as my said attorney shall deem fit, any and all real estate now owned by me or which my said attorney may acquire for me, or any part thereof, and to release, satisfy and assign mortgages, and in my name to make, execute, acknowledge and deliver good and sufficient deeds, conveyances, leases and mortgages of the same and releases, satisfactions and assignments of mortgages, either with or without covenants of warranty, and any and all other instruments which to my said attorney may seem necessary or expedient in connection with the same; to receive, recover, take possession of, sell, assign, transfer and set over all and any bonds, stocks or shares of stock or other securities standing in my name on the books of any company, or belonging to me, or to which I am entitled, and for that purpose to make and execute all necessary acts and deeds of assignment and transfer and to substitute one or more persons with like power, and to exercise any and all voting powers on said shares of stock; and to receive the divi-

dends, interest and income which are or shall be payable on any and all such stock, bonds or securities standing in my name on the books of any company or corporation, government or municipality, and to give good and proper receipts therefor; to take any judicial proceedings in my name and to commence and prosecute any suits or actions for any goods, chattels, debts, demands, duties, matter, cause or thing whatsoever due or belonging or to be due or belonging unto me or that may be demanded by me in any
72 court of law or equity or elsewhere, and to prosecute and follow up or discontinue and settle the same; and also for me and in my name to appear, answer and defend all actions and suits which are or hereafter may be commenced against me by any person whatsoever, and in my name to settle and adjust with each and every person or persons, all accounts due and demands subsisting or to subsist between them or either of them and me, and to compound and arbitrate the same, and in general to do all of the foregoing acts and things or any other act or thing necessary or expedient in connection therewith, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal the nineteenth day of March, in the year One thousand nine hundred and twenty-five.

(Signed) HENRY K. S. WILLIAMS. [L. s.]

Sealed and delivered in the presence of

(Signed) ANDREW R. SHILAND.

STATE OF NEW YORK,

City of New York,

County of New York, ss:

On this 19th day of March, in the year One thousand nine hundred and twenty-five before me personally came Henry K. S. Williams, to me known and known to me to be the person described in and who executed the foregoing Power of

Attorney, and he duly acknowledged to me that he executed the same.

(Signed)

ARTHUR G. DONNELLY,
*Commissioner of Deeds of the City of
New York, Residing in the Borough
of Manhattan.*

N. Y. County Clerk's No. 495, N. Y. County Reg. No. 25076.

Kings County Clerk's No. 62, Kings County Reg. No. 5056.

Term expires November 13, 1925.

73

No. 39082, Series B.

STATE OF NEW YORK,

County of New York,

City of New York, ss:

I, William T. Collins, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county, do hereby certify that said Court is a Court of Record, having by law a seal; that Arthur G. Donnelly, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, was at the time of taking the same a Commissioner of Deeds in and for said city and county, duly commissioned and sworn, and qualified to act as such; that as such Commissioner of Deeds, he was duly authorized by the laws of the State of New York to administer oaths and affirmations, to take affidavits and certify the acknowledgment and proof of deeds and other written instruments to be read in evidence or recorded in this state; and further that I am well acquainted with the handwriting of such Commissioner of Deeds and verily believe that his signature to such proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 25 day of Apr. 1928.

(Signed)

[SEAL.]

WILLIAM T. COLLINS,

Clerk.

Recorded in Richmond County Clerk's Office in liber 4, page 484, April 26, A. D. 1928, at 9 o'clock 11 minutes A. M.
Power of Atty.

(Signed)

JAMES L. VAIL,

Clerk.

74 United States Board of Tax Appeals. Filed Mar. 26,
1931.

United States Court of Appeals for the District of
Columbia.

Docket No. 44252.

H. K. S. WILLIAMS, Petitioner,

v.

DAVID BURNET, Commissioner of Internal Revenue,
Respondent.

*Notice of Filing Petition for Review of Decision of the
U. S. Board of Tax Appeals.*

To David Burnet, Commissioner of Internal Revenue, the
above-named respondent, and to C. M. Charest, General
Counsel, Bureau of Internal Revenue, his attorney.

SIRS:

Please take notice that on this 26th day of March 1931
the petitioner herein, Henry K. S. Williams, will present to
the United States Board of Tax Appeals and file with the
Clerk thereof, a petition, copy of which is annexed hereto,
for the review by the United States Court of Appeals for
the District of Columbia, of the final order and decision of
the said Board entered on October 30, 1930, in the proceed-
ings docketed in the records of the Board under Number
44252.

HUGH C. BICKFORD,
Attorney for Henry K. S. Williams,
815 Fifteenth Street, N. W., Washington, D. C.

Washington, D. C., March 26, 1931.

Copy of the within notice and copy of petition for review
is hereby accepted this 26th day of March, 1931.

C. M. CHAREST,
General Counsel, Bureau of Internal Revenue,
Attorney for the Respondent.

75 United States Board of Tax Appeals, Filed Apr. 30,
1931.

Before the United States Board of Tax Appeals.

Docket Nos. 22452, 45814.

THOMAS WILLIAMS, Petitioner,

v.

DAVID BURNET, Commissioner of Internal Revenue,
Respondent.

Docket No. 44252.

H. K. S. WILLIAMS, Petitioner,

v.

DAVID BURNET, Commissioner of Internal Revenue,
Respondent.

Stipulation to Consolidate Appeals.

The petitioners, Thomas Williams and H. K. S. Williams, and the respondent, David Burnet, Commissioner of Internal Revenue, by their respective attorneys, hereby stipulate and agree that the proceedings under the foregoing docket numbers be consolidated for purposes of appeal to the Court of Appeals of the District of Columbia.

The parties hereto further stipulate and agree that in preparing the record for transmission to the said Court of Appeals of the District of Columbia the Clerk of the Board of Tax Appeals may include a single statement of the evidence adduced at the joint hearing upon said proceedings, and that for the purposes of printing the record, filing briefs and presenting oral argument, the said cases may be consolidated.

(S.) R. KEMP SLAUGHTER,

(S.) HUGH C. BICKFORD,

Attorneys for Petitioner,

815 Fifteenth St. N. W., Washington, D. C.

(S.) C. M. CHAREST,

General Counsel, Bureau of Internal Revenue,

Attorney for the Respondent.

76 Filed June 3, 1931, U. S. Board of Tax Appeals.

United States Board of Tax Appeals.

Docket Nos. 22452 & 45814.

THOMAS WILLIAMS, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Docket No. 44252.

H. K. S. WILLIAMS, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Statement of the Evidence.

The above entitled causes came on for hearing before the Honorable Charles P. Smith, member of the United States Board of Tax Appeals on the twentieth day of February, 1930, there being present the petitioners by their counsel James L. Andrews, R. Kemp Slaughter and Hugh C. Bickford, and the respondent by his counsel, James L. Backstrom.

Whereupon the petitioners to maintain the issues on their behalf introduced into evidence the deposition of Thomas Williams, the same having been taken under order of the said United States Board of Tax Appeals in the Borough of Manhattan, City of New York, State of New York, on the third day of September 1927. Said deposition as material to the issues raised contained testimony as follows:

Thomas Williams, being first duly sworn, testified that he resided at Lawrence, Long Island. That he was a member of the copartnership of Ichabod T. Williams & Sons, of 220 Eleventh Avenue, New York, N. Y. That in 1919 and previous to that time he had owned real property in Staten Island, New York. That such property was located on the Bay between Tompkinsville and Stapleton. That such property was water-front property about twenty-three hundred (2300) feet on the water, extending back to Bay Street and about one thousand (1000) feet deep.

Whereupon witness Thomas Williams testified as follows:

Q. Was it essentially business property, being water front property, suitable for what purpose in the main? A. Very suitable for our purpose—it was also suitable for improvement in connection with the facilities for oversea commerce and building piers.

Q. What sort of improvements were on the property?

A. We had a manufacturing establishment on the property, saw mills, warehouses, etc.

Q. Would you consider it suitable as a general proposition for residential purposes? A. No, sir.

77 Q. Had you at any time any idea at all of using it for residential purposes for yourself or any member of your family? A. No, sir.

Q. It is essentially business property? A. Absolutely.

Q. Did you own this property subsequently to the year 1919? A. No.

That a resolution of the Sinking Fund Commissioners provided that the City take title to such property. That after such taking the firm of which he was a member used some of the facilities and during the remainder of 1919 for about one year, paid rent to the City of New York. That they were required to pay such rent by reason of the proceedings taken by the City of New York in 1919. That previous to the proceedings taken by the City his firm had paid to him as an individual, rental for the same facilities. That under the arrangement made with the City to continue using these facilities, the City could give a thirty-day notice of ejection, which notice was given about one year after taking. The witness thereupon identified his income tax returns for the years 1921, 1922 and 1924.

Whereupon the following transpired:

Mr. Low (counsel for respondent): The returns, having been identified, I will not object to Counsel for the taxpayer reading into the record any figures and statements he desires to get in evidence.

Mr. Andrews:

Q. The return for 1924 contains on line 16 A a deduction of \$18,111.85.

Mr. Low: That is correct.

Mr. Andrews:

Q. The return for 1922 contains on line 5 a figure \$5241.62 representing a loss, which figure is taken from Schedule B on that return, the said Schedule B including an item of \$8822, under "other expenses" which are explained in an attached statement as having been incurred in condemnation proceedings. A. Yes.

Mr. Low: That is correct.

Q. The return for the year 1921 shows on line 4 an item of loss amounting to \$4805.01 which is taken from Schedule "A" in which schedule under the heading "other expenses" appears a charge of \$8585.39. A. Correct.

Mr. Low: That's right.

Mr. Andrews:

Q. Mr. Williams, I hand you a statement which purports to be a schedule of cash payments made by you in the years 1921, 1922 and 1924. Can you testify to your knowledge, Mr. Williams, that that statement is correct? A. I do.

78 Q. Have you checked it against the actual payments as evidenced by cancelled checks? A. I checked it against the vouchers, yes sir.

The statement thus identified by the witness Williams was as follows:

PETITIONER'S EXHIBIT I.

Anna K. Strasser.

9-3-27.

Statement of Cash Payments Made by Thomas Williams.

1921.

March	31.	To Stone & Webster	\$1,046.08
March	31.	" F. C. Schmitz	625.25
April	7.	" Joseph P. Day	1,250.00
May	2.	" Charles W. Morrison	250.00
July	18.	" O'Brien, Boardman, Parker & Fox	5,000.00

1921.

July	18.	To O'Brien, Boardman, Parker & Fox	201.56
Dec.	15.	" William M. Mullen	162.50
Dec.	15.	" Michael Cahill	50.00
Total			\$8,585.39

1922.

Jan.	9.	To William J. Wilgus	1,946.25
Mar.	3.	" F. C. Schmitz	100.00
Mar.	24.	" O'Brien, Boardman, Parker & Fox	525.15
Mar.	29.	" Joseph F. Day	1,250.00
Apr.	5.	" F. C. Schmitz	750.00
Apr.	21.	" "	12.50
May	3.	" "	137.50
May	24.	" O'Brien, Boardman, Parker & Fox	694.20
"	24.	" F. C. Schmitz	375.25
"	24.	" E. F. Rockwood	146.39
"	25.	" J. Sterling Drake	375.00
June	5.	" Charles J. Farley	1,250.00
"	13.	" Charles W. Morrison	250.00
July	6.	" Stone & Webster	509.76
Oct.	31.	" A. Floyd Corbin	500.00
Nov.	6.	" Elden S. Clark	500.00
Total			\$8,822.00

1924.

Jan.	14.	To O'Brien, Boardman Parker & Fox	16.00
"	30.	" Francis Muller	225.00
Feb.	14.	" O'Brien, Boardman, Parker & Fox	17,870.85
Total			\$18,111.85

79 Whereupon testimony was given as follows:

Mr. Andrews:

Q. Can you state what the payments were made for? A. They were all made in the course that we were required to

take to protect our interests by reason of the action of the City in the condemnation proceedings.

Q. What was the nature of the services rendered? A. Legal services and experts' services.

Q. What sort of experts? A. Experts in connection with valuation.

Q. The valuation being in question in the proceedings brought by the City of New York? A. Yes, sir.

Q. To acquire your property in Staten Island? A. Yes.

Q. In your judgment was it entirely necessary that you should have expended the amounts stated on the list in order to adequately protect your rights——

Mr. Low: I object to that as calling for a conclusion of the witness. I do not believe that he has shown qualification as being an expert justifying testimony along this line.

The objection hereto was overruled by the Honorable Charles P. Smith at the hearing hereof.

A. Yes, I believed it to be entirely necessary and essential to pay these moneys.

Mr. Andrews: That's all.

Whereupon on cross examination by Mr. Low (counsel for the respondent) said witness Williams testified that the expenses were made by the owners of the property Thomas and Henry K. S. Williams, that the firm did not own the property and did not pay these expenses.

Whereupon testimony was given as follows:

Mr. Low:

Q. And you are claiming these as expenses deductible from income tax during the years involved while the Government contends, according to the pleadings, that they are capital expenditures which are not deductible as ordinary and necessary expenses—that's correct, isn't it? A.

80 Yes.

Q. Referring to the sheet containing the items of expenses which you have identified as being correct and which you have stated you checked against the checks which were written to the various individuals, the first item appears to be one to Stone & Webster, March 31, 1921—

\$1,046.08—who are Stone & Webster? A. Stone & Webster are probably the most important firm of engineers in the United States and they were employed by us as experts to place a value on the firm's property in which the firm had quite a considerable interest—that is in pieces of machinery—and while the title to the real estate was in Thomas and Henry K. S. Williams, the firm of Ichabod T. Williams had a very considerable interest in the improvements—therefore, we felt it necessary to employ Stone & Webster in order to prove in court the value of these improvements and machinery that the City took from us. That is the reason for their employment.

Q. What was the nature of their services? A. Stone & Webster sent five engineers to Staten Island to work. They took the measurements of all the buildings. They took the value of the buildings, the replacement value with the depreciation and they valued all the machinery that was there and their report is contained in a volume that is several hundred pages.

Q. Their work consisted in appraisal of machinery, buildings and property? A. Not the real estate. Only improvements.

Q. The real estate, as I understand it, was owned by you individually but the improvements were put on by the partnership. A. Not entirely. Some of the improvements were paid for by Thomas and Henry K. S. Williams but a great deal was paid by the firm of Ichabod T. Williams & Sons.

Q. On the same date—March 31, 1921—a check for \$625.25 was given to F. C. Schmitz—who is he? A. Mr. Schmitz was the man employed to make maps of the property and also to arrange with Stone & Webster for the expenses of the engineers, who were brought on from Boston. We did the business through him and he paid the expenses, hotel bills, etc. and we reimbursed him.

Q. And the nature of his work was drawing maps of the property? A. Yes, sir.

Q. That was the water front property? A. Yes.

Q. That is the property which was in your name as an individual? A. The property was in the name of Thomas and Henry K. S. Williams, as owners.

Q. The next check—Joseph P. Day—\$1,250.00—April 7, 1921—who is Mr. Day? A. One of the leading real estate agents in the City of New York and he testified as to what he considered the market value of the property on the date the City took it over.

81 Q. In other words, this charge is for his examination and testimony as a real estate expert as to the value of the property? A. Yes.

Q. Now then—Charles M. Morrison—\$250.00—May 2nd, 1921—who is Mr. Morrison? A. He is an engineer and he was employed in connection with maps.

Q. Maps of the property or buildings or both? A. Just the property.

Q. O'Brien, Boardman, Parker & Fox—July 18, 1921—\$5,000.00 and \$201.56. A. Legal services.

Q. What was the nature of their legal services? A. They were our counsel in the entire proceeding and conducted the litigation.

Q. December 15, 1921—William M. Mullen—\$162.50—A. Mr. Mullen was called to testify as to certain streets that were laid down on the map but were not opened. Mr. Mullen is a very old resident of Staten Island. He was called as a witness to testify that the streets had never been used; that while they appeared on the map, they had never been used.

Q. He was also a witness in the proceeding which you brought against the City of New York? A. Yes.

Q. Michael Cahill—December 15, 1921—\$50.00—Who is Mr. Cahill? A. I do not remember who he is.

Q. You do not remember the nature of the services rendered by Mr. Cahill? A. It had to do with the proceedings in court, but just what his function was, I do not remember. Of course we can find out from Mr. Freeman.

Q. Now going to 1922—the first item is William J. Wilgus, January 9, 1922—\$1,946.25. A. Mr. Wilgus was a real estate expert. Mr. Wilgus was Vice-President of the New York Central Railroad and had constructed terminal facilities and also terminal facilities for Lackawanna and other railroads. He was looked upon as one of the best informed men in New York as to valuation and quoted on property in the harbor. We employed him as an expert.

Q. Was his testimony used in connection with your suit against the City of New York? A. Yes, he wrote a brief.

The best brief I ever read.

Q. This payment to Mr. Wilgus appears in 1922 while the other expenses for expert testimony and fees of attorneys appear in 1921. Can you explain that? A. Only that Mr. Wilgus did not render his bill until the end of 1921 and was paid the first few days in January.

Q. The next item is to F. C. Schmitz—March 3, 1922—\$100.00—— A. That had to do with expenses of these engineers from Boston.

Q. You have another item—March 24, 1922—O'Brien, Boardman, Parker & Fox—\$525.15—— A. These are some costs in connection with the records.

Q. Court costs? A. Yes.

82 Q. Joseph P. Day—\$1,250—March 29, 1922——

A. Payment to Mr. Day as an expert.

Q. You were paying him a yearly salary, were you? A. Yes.

Q. And three other items to F. C. Schmitz—\$750.00, \$12.50 and \$137.50—— A. Disbursements made by Mr. Schmitz in connection with the Stone & Webster people for hotels, etc.

Q. This was a part of Mr. Schmitz expense account which he turned in to you and you paid under contract had with him? A. Yes.

Q. Another payment of \$694.20—O'Brien, Boardman, Parker & Fox—May 24, 1922—— A. That is for costs.

Q. Court costs? A. Yes.

83 Q. Another item to F. C. Schmitz—\$375.25—May 24—— A. Still another disbursement made by him.

Q. For hotel expenses? A. Yes.

Q. In May—E. F. Rockwood—\$146.39. A. Mr. Rockwood drew some maps that were required by Mr. Boardman. He asked us to get someone to draw a certain map and Mr. Rockwood was employed as an expert on maps.

Q. On May 25th we have an item—J. Sterling Drake—\$375.00—— A. Mr. Drake was a real estate expert. He is one of the leading real estate dealers in Staten Island and we wanted the testimony of a local man.

Q. June 5—Charles J. Farley—\$1,250. A. He is a real estate expert. He was formerly Secretary to the Commissioner of Docks and we employed him in order to bring out the different proceedings that had been taken in the Board, that he was familiar with, to press the city, as he had all

the copies of the records. We never put him on the stand.

Q. This was a yearly salary that you were paying him also? A. No; we only made him the one payment.

Q. The next payment—Charles W. Morrison—\$250. A. Charles W. Morrison was again the man who was employed to make maps in connection with the case.

Q. Stone & Webster—July 6—\$509.76—— A. They were the engineers.

Q. This was an additional expenditure incurred by them? A. Yes.

Q. Floyd Corbin—\$500.00—October 31—— A. Mr. Corbin was employed as a real estate expert to testify as to his opinion on valuation.

Q. November 6—Eldon S. Clark—\$500.00—— A. Still another real estate expert.

Q. And in 1924, we have a payment of \$16.00 to O'Brien, Boardman, Parker & Fox—— A. That was probably some little bill for printing or some other expense.

Q. You do not know definitely? A. No.

Q. Francis Muller—January 30—\$225.00—— A. Mr. Muller was an old time resident of Staten Island and was put on the stand to testify as to condition of water fronts.

Q. February 14—O'Brien, Boardman, Parker & Fox—\$17,870.85—— A. Bill rendered for legal services.

Q. What were the services rendered by O'Brien, Boardman, Parker & Fox? A. They conducted the entire legal proceeding. They appeared in court and for one year the proceedings were before the Supreme Court and the case was brought up periodically at intervals of two to four weeks. They appeared for us and they examined the witnesses and cross examined the witnesses and prepared brief to the Supreme Court and made the argument before Mr. Justice Faber. They charged a very reasonable price.

Q. As I understand it, Mr. Williams, you owned the property in fee and some of the buildings or a portion at least had been erected by the partnership of which you are
84 a member and this proceeding on the part of yourself against the City was in protection of the real estate and the buildings and improvements on the property and these expenditures are made in protection of the property, the buildings and equipment on it? A. Yes.

Mr. Low: That's all.

Whereupon counsel for the petitioner, Mr. Andrews introduced into evidence a statement of cash payments made by Thomas Williams which had been identified as hereinabove set forth, the same being received in evidence without objection by counsel for the respondent and marked "Exhibit I".

Whereupon on redirect examination the witness Thomas Williams testified as follows:

Mr. Andrews:

Q. Mr. Williams, when you spoke of "us" in connection with these expenditures, did you refer to yourself and the copartnership Ichabod T. Williams & Sons, or to some other individual? A. No, I referred to Thomas and Henry K. S. Williams and the firm of Ichabod T. Williams.

Q. Did the firm of Ichabod T. Williams & Sons as such have any interest whatever in the proceedings brought by the City to acquire the property that you spoke of? A. The firm of Ichabod T. Williams, under a stipulation, agreed to put in no claim for this——

Q. Just state your recollection of the specific stipulation, Mr. Williams, that was entered into, if there was such a stipulation on behalf of the firm as to form—— A. I thought perhaps you might want to have it in the language of the brief—Ichabod T. Williams & Sons had a considerable interest in improvements. The Edgewater Saw Mills Company had a large interest. In order to simplify the proceedings they entered into an agreement with Thomas and Henry K. S. Williams to put in no evidence of their claims.

Q. What form did that agreement take? A. It was a verbal agreement.

Q. Between whom? A. Between the firm and Thomas and Henry K. S. Williams.

Q. To the effect that the firm would be reimbursed? A. That the firm would be reimbursed from the proceeds of the award.

Q. For what? A. For the interest that they had in the improvements. Q. The interest they had in the improvements? Did they actually own any portion of the real estate buildings or machinery down there? A. They owned nothing in the way of real property. They had certain moneys that they had invested in machinery and buildings and improvements.

Q. Was that investment substantial in amount? A. It was quite a considerable amount.

Q. In excess of \$100,000? A. I should say that it was just about \$100,000.

85 Q. Were these proceedings that you spoke of brought by the City pending during 1921, 1922 and 1924? I mean the proceedings in connection with the taking over of the property that you owned in Staten Island pending before the courts in 1921, 1922 and 1924? A. Yes.

Q. And were the expenses paid by you, which are outlined in the statement, offered in evidence and marked Exhibit I, all incurred in connection with those proceedings during these years? A. Entirely so.

Q. Have the proceedings now been concluded? A. Yes. The award has been affirmed in the Court of Appeals of the State of New York.

Q. Can you state from your recollection the approximate amount of the award for the entire property owned by you?

Mr. Low: I would object to that because the award would be the best evidence.

(This objection was not renewed at the time the deposition was placed in evidence.)

Mr. Andrews:

Q. I merely wish to get an approximation of the total figure—I request that the witness state merely his recollection of the total amount. A. \$3,800,000.

Q. Mr. Williams, you have made a statement in reply to some of the questions on cross examination, that I think it was Mr. Joseph P. Day was paid a yearly salary. A. That is not correct.

Q. What arrangement did you have with Mr. Day? A. We agreed to pay Mr. Day a fixed amount and the payment I think was made in two installments. It was not a yearly salary. Mr. Day agreed to testify for a fixed amount.

Q. Getting back to the interest of the copartnership in the facilities, or rather in some of the facilities on the property owned by you, you say they were not made a party to the proceedings. Is there any understanding between you and the other parties to the proceeding with respect to the amount which is to be repaid to the firm when the award is finally confirmed? A. Not as to the exact amount. Could

not make any agreement as to exact amount because we did not know what the award would be and did not know how it would be phrased—there was no agreement as to the exact amount to be paid.

* * * * *

Q. Was it not recognized by the firm that upon the condemnation of the property by the City that it would be impossible for them to recover anything like the value of the facilities which they owned in the buildings or a part of the buildings?

Mr. Low: I object to that as being a leading question.

Mr. Andrews:

Q. I withdraw that question. I wish you would state in your own words, Mr. Williams, just what the arrangement was. A. Our counsel, Mr. Boardman, 86 stated to me that he wanted me to have just one party represented in court. He said "Do not bring in the firm or Edgewater Mills."

Q. What I am trying to bring out is the specific interest, if any, which the copartnership as such had in the property as owners of part of the property. You have testified that they did own some of the machinery and perhaps buildings and other facilities. A. Yes, that's correct.

Q. Under what arrangement had they originally purchased and installed or constructed these facilities on the real property owned by you? A. They were continually spending money in improvements of the property.

Q. Was it understood that this property was to go back to them at any time or that they would be repaid by you and any other owners of the property the amount they invested in these facilities? A. No.

Q. Was it an understanding then, that you as owners of the real property were to hold the facilities? A. I think so. There was no specific agreement.

Q. No understanding that the property was to go back to the firm? A. No understanding at all.

Q. Was there any written lease or arrangement under which the firm used these facilities or occupied any of the buildings? A. There was a lease of the entire property.

Q. Was that a written lease? A. Yes.

Q. Do you recall the period? A. Ten year period.

Q. As I understand it, you recall no arrangement or agreement that provided that the copartnership should recover any of the assets which they placed on that real property.

Mr. Low: I object to that as a leading question.

(This objection was not renewed at the hearing.)

Q. Do you recall any specific arrangement made by the firm, either written or verbal, which would permit them to recover assets which they would——

Mr. Low: I object to that question as calling for a leading conclusion.

(The foregoing objection was overruled at the hearing.)

Q. You do not recall any such arrangement? A. No.

Q. I think that's all.

Whereupon in recross-examination the witness testified that Ichabod T. Williams and the Edgewater Saw Mills had an interest in those buildings, that the Edgewater Saw Mills was a corporation existing under the laws of the state of New York with six stockholders, some of whom were not members of the firm. That the said partnership in the saw mills company constructed only machinery on the property owned by him. That the copartnership did not own or construct buildings.

Whereupon the witness testified as follows:

Cross-examination.

By Mr. Low:

Q. The Saw Mills Company constructed the buildings?

A. No. Thomas and Henry K. S. Williams put up the buildings at their expense and from time to time considerable expenditures were made in putting in additional power at Edgewater and we spent \$50,000 in addition to the power house, but the power house was owned by Thomas and Henry K. S. Williams. They erected it, but the increased boilers and facilities were paid for by the Edgewater Saw Mills Company.

Q. Who constructed the buildings that were constructed other than by you individually? A. Ichabod T. Williams & Sons.

Q. Who is Ichabod T. Williams & Sons? Is it a partnership? A. Yes.

Q. Of which you are a member? A. Of which I am a member.

That the partnership leased a portion of the property in 1903 for a ten year period, which was renewed for ten years. That the lumber company made expenditures for a short pier and the firm did that at their expense, also put in a bulkhead for the use of lighters at their own expense. That he had not reimbursed either the partnership or the lumber company from this award.

Whereupon on redirect examination the witness Williams testified as follows:

Mr. Andrews:

Q. Mr. Williams, in connection with rights of the Edgewater Saw Mill Corporation—did they rent part of this property about which you have been testifying from you and Mr. Henry K. S. Williams? A. Yes, they did.

Q. My impression was that they were a party in their own right to this proceeding. I think I am mistaken in that, however. A. They rented that part of the property that was occupied by the Saw Mills Company.

Q. As to the improvements that were put on the property by the copartnership, Mr. Williams, isn't it a fact, to your knowledge, that for a number of years prior to 1919, the authorities of the New York Harbor had been working out some plan of reorganization in acquiring various properties here and there and improving the port?

Mr. Low: I object to that as a leading question which calls for information which the witness has not shown he is familiar with and he would no doubt be depending on hearsay statements in order to be in a position to answer.

Mr. Andrews: I will withdraw that question. Perhaps it is a little previous.

Q. Mr. Williams, how long have you been a resident of New York City and vicinity? Just roughly? A. About 71 years.

Q. During all of your active business career, you have been located in and about New York City? Is that correct? A. Yes.

Q. What is the business of the firm of Ichabod T. Williams & Sons? A. We are importers of foreign woods and handlers of domestic lumber.

Q. Have you been in more or less direct charge of the activities of the firm for the past twenty or thirty years?

A. For the past fifty-two years.

Q. Have those activities brought you in contact with shipping conditions and the situation in the port of New York?

A. Yes.

88 Q. Can you state then of your own knowledge and experience in connection with shipping in the harbor, that there has been an endeavor on the part of the City authorities to improve the conditions in the port during the last fifteen years? A. Really, that is a matter of record. The legislature has authorized the City of New York to acquire the water front.

Q. I am just trying to get your recollection. As a business man operating in the City of New York for a long time, what I am trying to bring out—— A. My answer is “Yes”. The official records will prove what I am saying.

Q. With the knowledge you have of the activities of the City authorities in their attempt to improve the port by acquiring properties and dredging, would it be likely that you would have put extensive improvements on your water front property within the past ten years? You say the copartnership of Ichabod T. Williams & Sons, at various times have made improvements by erecting buildings, putting in machinery and adding to the property in various ways—I am trying to bring out whether or not—with the port authorities active in acquiring properties around the port in carrying out the plans—whether it would be likely that the firm would invest very substantial amounts in properties of that kind that were likely to be taken over by the city? A. Yes, for the reason that we believe ourselves to be too remote from the activities of the city. We thought they would continue their activities—we did not think that they would go to Staten Island, that was so far in the future that we were justified.

Q. I want to get clear the statement you made that the firm constructed buildings on the property—is that your recollection that the firm constructed any extensive buildings on the property? A. No extensive buildings.

Q. What was the character of the buildings? A. I think we put up short piers—bulkheads—paved streets.

Q. Comparatively minor improvements? A. Yes.

Q. In any case, where it was desired to put up a substantial structure or add an expensive piece of machinery that was done by you and Mr. Henry K. S. Williams as the owners of the property? A. Yes.

Mr. Andrews: I think that's all.

Mr. Low:

Q. The expenses which are shown by petitioner's Exhibit I were incurred, according to your contention, in connection with the protection of the property, the buildings and all improvements on the property? A. Yes.

At the trial hereof the objections by counsel reflected in the foregoing narrative of the deposition were raised and ruled upon or not raised as indicated.

Whereupon by stipulation orally made by the counsel for the petitioner and counsel for the respondent, there was introduced into evidence as petitioner's Exhibit No. 1, twelve printed volumes comprising the printed record of the litigation in connection with which expenditures were made by the petitioner, which printed record showed the following:

89 That on July 17, 1919 the Commissioners of the Sinking Fund adopted a resolution providing for institution of proceedings to condemn certain properties:

That this resolution was approved by resolution of the Board of Estimate and Apportionment on July 18, 1919;

That on August 13, 1919 the City filed petition with the Supreme Court for leave to condemn;

That on August 25, 1919 the Supreme Court entered its order granting application of the City of New York to condemn;

That on September 25, 1919 the Commissioners adopted the following resolution:

“Resolution of the Commissioners.

Resolved that pursuant to law, the Commissioners of the Sinking Fund hereby direct that title to the property to be acquired for the improvement of the waterfront and harbor

of The City of New York, between Simonson Avenue, Clifton, and Arrietta Street, Tompkinsville, Borough of Richmond, as more particularly hereinafter described, shall vest in The City of New York on Saturday, October 11, 1919, and all of the rights, title and interest of any and all of the owners or persons interested in the said wharf property, rights, terms, easements and privileges, lands under water or uplands, shall cease and determine and be extinguished at such time."

That on October 28, 1919 the court entered notice to the owners to file claims for damages;

That claims were filed by Thomas and Henry K. S. Williams, the Stapleton Dock & Warehouse Corporation, Edgewater Saw Mills Company, Ichabod T. Williams and Sons, and others;

That testimony was taken and Mr. Justice Faber entered judgment on March 13, 1925.

90 Whereupon counsel for the petitioner with consent of counsel for the respondent introduced into evidence typewritten copies of the decision of the Appellate Division of the Supreme Court of New York, entered on the 28th day of January, 1927, and reported at 215 Appeals Division 204-438 as petitioner's Exhibit No. 2 and a copy of the decision of the Court of Appeals of the State of New York entered on July 20, 1927 reported at 246 New York 1, as petitioner's Exhibit No. 3.

Whereupon **William W. Warren** was called as a witness for and on behalf of the petitioner and having been first duly sworn was examined and testified as follows: That his business address was 228 Eleventh Avenue, New York, N. Y. That he was financial secretary for Thomas Williams and Henry K. S. Williams. That he had been associated with them for over forty years. That he served in the capacity of financial secretary to them from 1921 to 1926. That in such capacity his duties included the keeping of the records of the two individuals. That he kept a separate account of their income and drew any checks he was ordered to draw and saw to such investments as were coming in. That he had charge of drawing practically all checks for these gentlemen. Whereupon the following testimony was given:

Mr. Bickford:

Q. And you kept what records were kept for them as individuals? A. Records of income.

Q. What was the nature of those records, Mr. Warren? A. Cash receipts and disbursements.

Q. Well, what sort of books were they kept in, I mean? A. In the case of Thomas Williams we had a check book and another book which I kept, a record of income in; in the case of H. K. S., I had his checkbook and transcribed it to a cashbook.

Q. Did they keep any journal or ledger or any set of books in that way that could be, or upon which accrued items were entered? A. No, sir.

Q. Only the cash book which you have spoken of and the checkbooks? A. That is all.

Q. Now, Mr. Warren, are you familiar with the testimony given on deposition by Mr. Thomas Williams, in New York? A. Yes.

Q. And you are familiar with the fact that he testified that certain expenditures were made by him from 1921 to 1924 in connection with certain litigation? A. I am.

Q. And in your duties during the years 1924 and 1925 for Mr. Henry K. S. Williams, and 1925 and 1926 for Mr. Thomas Williams, did you at that time have charge of drawing the checks, and so forth, which they made for similar expenditures? A. Yes.

Q. I hand you what purports to be three cancelled checks, and I will ask you to identify them and state what they are. A. The first check, H. K. S. Williams, January 14, 1924, drawn to the order of Louis Granite for \$16.00 was for certain court work—transcription of minutes, as you call them; the second was dated January 30, 1924, drawn to the order of Francis Muller, for \$225.—I do not recall, off-hand, what that was for, without a reference to some memorandum that I kept.

Q. Have you a memorandum here which you prepared, which would refresh your memory? A. I have.

91 Q. Is this it? A. Yes.

Q. Well, does that refresh your memory as to what the check to Mr. Francis Muller was for? A. Yes, preparation of maps, and for making Court attendance, and so forth; the third check is dated February 14, 1924, drawn to the order of O'Brien, Boardman, Parker and Fox, \$17,-

870.84; that was in payment of a bill from this firm of lawyers, for legal services in connection with these condemnation proceedings.

Mr. Bickford: I will offer these cancelled checks in evidence, and request permission to offer photostatic copies of them instead of the originals.

(Mr. Bickford handed the photostats to Mr. Backstrom.)

By Mr. Bickford:

Q. Just one question, Mr. Warren, in connection with this check; the check is signed, apparently, H. K. S. Williams by Thomas Williams, Attorney; will you explain the necessity for that. A. Mr. H. K. S. Williams lives abroad, and his brother Thomas Williams has a full power of attorney.

Mr. Backstrom: No objection, your Honor; and I have no objection, your Honor, to him substituting photostatic copies for the originals.

The Member: The photostatic copies are received in lieu of the originals, and the three checks will be marked Petitioner's Exhibits 4, 5, and 6, respectively.

Whereupon the witness, William M. Warren identified check dated May 6, 1925 drawn to the order of O'Brien, Boardman, Parker & Fox for \$116.00, that such check was to cover a bill for disbursements by that firm. There was identified another check dated May 6, 1925 to the order of O'Brien, Boardman, Parker & Fox in the amount of \$5,000 on account of legal services. That these legal services were all in connection with this condemnation matter. Whereupon said checks were received in evidence without objection as petitioner's exhibits 7 and 8.

Whereupon the witness, William M. Warren identified check dated May 6, 1925 to the order of O'Brien, Boardman, Parker & Fox for \$5,000, signed by Thomas Williams, that such check was on account of legal services in connection with the condemnation proceedings.

Whereupon the witness also identified check dated May 6, 1925 to the order of O'Brien, Boardman, Parker & Fox for \$116.01 signed by Thomas Williams and testified that such check was for certain disbursements made by that firm in connection with this same proceeding.

Whereupon testimony was given as follows:

Q. Now, Mr. Warren, I note that those two checks are in the same amount as the checks signed by Mr. H. K. S. Williams, in Petitioner's Exhibits 7 and 8 just introduced; will you explain that? A. Yes, because all expenses were divided evenly between Thomas Williams and H. K. S. Williams, and I might draw your attention to that one cent on the Thomas Williams check, the bill was for \$232, even, as I recall it, or \$232.01, and the odd cent was paid by Thomas Williams.

92 Whereupon without objection the two checks were received in evidence as petitioner's Exhibit Nos. 9 and 10. Whereupon the witness William Warren identified another check, dated October 5, 1926 for \$303.42 signed by Thomas Williams, payable to the firm of O'Brien, Parker & Fox and testified that this was for disbursements made by this firm of lawyers. Whereupon the said check was received in evidence without objection as petitioner's Exhibit No. 11. Whereupon the witness identified petitioner's Exhibit No. 1 and testified that it was the record of the proceeding in connection with which these expenditures were made. That he accompanied Mr. Williams to the Comptroller's office and saw him receive the vouchers at the termination of this litigation. That he made record of the receipt of the amounts received for this property and that such receipt was recorded in the check books of Mr. Thomas Williams and Mr. H. K. S. Williams. Whereupon the witness testified as follows:

Mr. Bickford:

Q. I hand you a book and will ask you to state if that is the checkbook that you refer to? A. It is.

Q. Which parties' check book is this? A. This book is Thomas Williams'.

Q. And is this the record which you kept of his receipts, accounts, and so forth, as you have previously testified? A. Yes.

Q. Calling your attention to this page in front of us—the pages are not numbered herein, but opposite check stamped No. 737 on the left hand side, I call your attention to an

entry totaling \$5,500,960.40, and I will ask you to explain what that is. A. They were three vouchers drawn by the city of New York, one for \$4,097,510.27 was in favor of Thomas and H. K. S. Williams; one for \$757,162.63 drawn by the city of New York in favor of the Stapleton Dock and Warehouse Corporation; another voucher drawn by the city of New York for \$646,287.50, also drawn in favor of the Stapleton Dock and Warehouse Corporation.

Q. Now, this is the record of the receipt of those amounts by Mr. Thomas Williams? A. It is.

Q. I call your attention on the opposite page to the stub of a check drawn to H. K. S. Williams, and will ask you to state what that represents. A. That check represented one-half of the amount received from the city.

Q. And these amounts were received as a result of this litigation which we have been discussing? A. Yes, sir.

Q. Were there any further amounts received than those, or, first, I will submit this in evidence, if your Honor please; I have a photostatic copy of the two pages from the checkbook, which I would like to submit instead of the original, your Honor.

The Member: What was the date of the receipt of those vouchers, or of the deposit of them.

Q. Will you state what the rate of that receipt was, Mr. Warren? A. December 10, 1927.

93 Mr. Backstrom: No objection, your Honor, to the document, or to the substitution of photostatic copies for the original.

The Member: Is there just one sheet of the photostat, Mr. Bickford?

Mr. Bickford: Yes, sir; the book has been photostated flat so that the two opposing pages show on one sheet.

The Member: The photostatic copy will be received as Petitioner's Exhibit No. 12.

(The photostatic copy of the check-stubs so identified and received in evidence, was thereupon marked "Petitioner's Exhibit No. 12," and is made a part of this record.)

By Mr. Bickford:

Q. You have stated, Mr. Warren, that two of these warrants were drawn to the Stapleton Dock and Warehouse

Company, I think you stated—— A. Corporation.

Q. What was the Stapleton Dock and Warehouse Corporation, and what were the checks drawn for? A. The Stapleton Dock and Warehouse Corporation was a holding company for real estate only.

Q. And who was that holding company owned by? A. And owned entirely by Thomas Williams and H. K. S. Williams, in equal parts.

Q. Now, were there any further amounts received from the city at the termination of this proceeding? A. There was.

Q. Will you state when those were received? A. On March 21, 1928, there was a voucher drawn by the City of New York to the order of the Stapleton Dock and Warehouse corporation for \$149,254.88.

Q. And I hand you again your check book record, and I will ask you to state if this is not the recording of that receipt on the left hand page, opposite check No. 803? A. Yes, sir.

Q. I call your attention to Check No. 805, on the opposite side, in the amount of \$74,627.44; will you state what that is? A. That is one half of the amount paid by the City in the voucher drawn to the order of the Stapleton Dock and Warehouse corporation for \$149,254.88.

Q. That was one-half payable to whom? A. H. K. S. Williams.

Q. What were the dates of these entries? A. The voucher was received on March 21, 1928, and the check drawn to the order of H. K. S. Williams on March 22, 1928.

Mr. Bickford: I wish to submit this in evidence; I do not seem to have a photostatic copy of this particular page; I wish to withdraw this and substitute photostatic copy for the same.

Mr. Backstrom: I have no objection.

The Member: It will be received in evidence as Petitioner's Exhibit No. 13, with the privilege to withdraw and substitute a photostatic copy.

94 (The document so identified and received in evidence, was thereupon marked "Petitioner's Exhibit No. 13" and is made a part of this record.)

By Mr. Bickford:

Q. Now, to your knowledge, Mr. Warren, did either Mr. H. K. S. Williams, or Thomas Williams receive any explanation from their attorneys as to what these payments which you have just testified to covered? A. Yes, sir.

Q. The receipt from the city? A. Yes, sir.

Q. I hand you a letter dated March 7, 1928, and I will ask you if you can identify that and state what it is, Mr. Warren? A. This letter was one explaining how the total amount of the award was arrived at.

Q. Now, calling your attention to the signature, who signs the letter? A. That is signed by E. J. Freedman.

Q. Are you familiar with his signature, so that you can identify that as his? A. Yes, sir.

Q. Now, what connection did Mr. Freedman have with this suit? A. Why, he was one of the firm of O'Brien, Boardman, Parker and Fox, and was the attorney of record, as I understand it.

Mr. Bickford: I will submit this in evidence, if your Honor please.

Mr. Backstrom: No objection, your Honor.

The Member: It will be received as Petitioner's Exhibit No. 14.

(The document so identified and received in evidence, was thereupon marked "Petitioner's Exhibit No. 14," and was as follows:)

"March 7, 1928.

"Mr. H. K. S. Williams,
15 Avenue des Fleurs,
Monte Carlo (Monaco),
France.

MY DEAR MR. WILLIAMS:

Yours of February 23rd, 1928, duly received and contents noted.

Your error arises in taking as the principal sum \$3,800,000 upon which to calculate interest.

The total amount of the awards was as follows:

Group 13.....	\$533,921.01
" 14.....	508,162.84
" 16.....	2,750,006.89
	\$3,792,090.74

Your principal sum of \$3,800,000 is therefore \$7,909.26 in excess of the total sum awarded by the Court.

95 Interest upon this sum for 8 years and 2 months, 49 per cent, amounts to \$3,875.54, which added to the excess of the principal sum totals \$11,784.80.

Deducting this amount from \$5,662,000 leaves a balance of \$5,650,215.20, being 8 cents less than the amount of the City Warrants, to wit:

Group 13, Warrant paid	\$646,287.50
Warrant withheld	149,254.88
Group 14, Warrant paid	757,162.65
Group 16, Warrant paid	4,097,510.27
Total	\$5,650,215.28
Deducting Warrant withheld	149,254.88
Amount paid	\$5,500,960.40

Before the receipt of your letter today I learned from the newspapers, as you have been advised by cablegram, that the U. S. Supreme Court denied the application of The Greater New York Dock and Warehouse Co. Inc. (Silbiger Matter) for a Writ of Certiorari.

I have written for a certified copy of the order entered by the Clerk and as soon as received will serve copies upon the City officials and upon Mr. Silbiger and take the necessary steps to collect the withheld warrant.

Very truly yours,
(Signed)

E. J. FREEDMAN."

EJF-L.

Whereupon the witness testified that the warrants totaling \$5,650,215.28 were the only amounts that were ever received by the taxpayers as a result of this proceeding.

Whereupon Mr. Bickford, counsel for petitioner conceded that petitioner, H. K. S. Williams claimed as a deduction in the proceeding for the year 1924 only \$18,111.85, the amount paid by him in that year instead of \$47,448.08 as claimed in petitioner's tax return.

Whereupon the witness, William M. Warren, testified that Henry K. S. Williams was retired during 1924 and 1925, that his business activities were nothing but investments; that Thomas Williams' only business connection

during 1921 to 1926 was with the firm Ichabod T. Williams and Sons, that they had no business requiring the use of inventories or the accrual of items.

That all the checks that were offered in evidence relating to expenses were paid in connection with the litigation involved in these condemnation proceedings. That there is no division between the expenses of the individuals, Thomas Williams and Henry K. S. Williams and the dock concern. There was a small profit realized by the petitioners as a result of the award accounted for as of the year 1927, based upon the comparison made between the 1913 value which was supported by an independent appraisal for tax purposes, and the amount which they received in 1927.

The respondent called no witnesses in rebuttal. Thereupon counsel for petitioners and the respondent stated they had no further or other evidence to present and rested their case.

96 The foregoing is the substance of all the evidence adduced at the trial of such proceeding material to the issues raised in this proceeding for review.

(Signed) R. KEMP SLAUGHTER,

(Signed) HUGH C. BICKFORD,

Attorneys for Petitioner.

(Sgd.) C. M. CHAREST,

General Counsel, Bureau of Internal Revenue,

Attorney for Respondent.

Approved

(S.) CHARLES P. SMITH,

Member U. S. Board of Tax Appeals.

June 3, 1931.

97 United States Board of Tax Appeals, Filed Jun. 1,
1931.

Before the United States Board of Tax Appeals.

Docket Nos. 22452 & 45814.

THOMAS WILLIAMS, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Docket No. 44252.

H. K. S. WILLIAMS, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Præcipe.

To the Clerk of the U. S. Board of Tax Appeals:

You will please prepare and before June 15, 1931 transmit to the Clerk of the Court of Appeals of the District of Columbia, certified copies of the following documents.

1. The docket entries of proceedings before the U. S. Board of Tax Appeals in the cases above entitled.

2. The pleadings before the Board.

3. The findings of fact, opinion and decisions of the Board.

4. Stipulation by the parties that case may be reviewed by the Court of Appeals for the District of Columbia.

5. The petitions for review and notice of filing same.

6. The stipulation of the parties for consolidation of the records and statement of the evidence in said proceedings.

7. Statement of the evidence as agreed upon.

8. Order of the Board enlarging time to June 15, 1931.

98 9. The original volumes being petitioners' exhibits 1 and 1a. Original Exhibits ordered up by court order of June 13, 1931.

10. This præcipe.

The foregoing to be prepared, certified and transmitted as required by law and the rules of the Court of Appeals of the District of Columbia.

R. KEMP SLAUGHTER,

HUGH C. BICKFORD,

*Attorneys for the Petitioner,**815 Fifteenth Street N. W., Washington, D. C.*

Consented to.

(Signed) C. M. CHAREST,

General Counsel, Bureau of Internal Revenue.

THOMAS WILLIAMS and HENRY K. S. WILLIAMS, Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Certificate.

I, B. D. Gamble, Clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages 1 to 98, inclusive, contain and are a true copy of the transcript of record, papers and proceedings on file and of record in my office as called for by the Præcipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 15th day of June A. D. 1931.

[Seal U. S. Board of Tax Appeals.]

B. D. GAMBLE,
Clerk.

United States Board of Tax Appeals.

Docket Nos. 22452-45814.

THOMAS WILLIAMS, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Order Enlarging Time.

Upon motion filed by counsel for the petitioner, it is ordered that the time for preparation of evidence and for transmission and delivery of the record *sur* petition for review of the above entitled proceeding by the Court of Appeals for the District of Columbia be and it is hereby extended to June 15, 1931.

(Signed)

LOGAN MORRIS,
Member.

Dated Washington, D. C., May 21, 1931.

B. D. GAMBLE,
Clerk.

A true copy. Teste:

[Seal U. S. Board of Tax Appeals.]

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

101 United States Board of Tax Appeals.

Docket No. 44252.

HENRY K. S. WILLIAMS, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Order Enlarging Time.

Upon motion filed by Counsel for the petitioner, it is ordered that the time for preparation of evidence and for transmission and delivery of the record *sur* petition for review of the above entitled proceeding by the Court of Appeals for the District of Columbia be and it is hereby extended to June 15, 1931.

(Signed)

LOGAN MORRIS,
Member.

Dated Washington, D. C., May 21, 1931.

B. D. GAMBLE,
Clerk.

A true copy. Teste:

[Seal U. S. Board of Tax Appeals.]

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

Endorsed on cover: Board of Tax Appeals. No. 5429. Thomas Williams, appellant, vs. David Burnet, Commissioner of Internal Revenue, and No. 5430. Henry K. S. Williams, appellant, vs. David Burnet, Commissioner of Internal Revenue. Court of Appeals, District of Columbia. Filed Jun. 15, 1931. Henry W. Hodges, Clerk.

SEP 28 1931

IN THE

Harry H. Hodges
5-10-31
Court of Appeals, District of Columbia.

APRIL TERM, 1931

No. 5429

THOMAS WILLIAMS, APPELLANT,

vs.

DAVID BURNET, COMMISSIONER OF INTERNAL
REVENUE,

AND

No. 5430

HENRY K. S. WILLIAMS, APPELLANT,

vs.

DAVID BURNET, COMMISSIONER OF INTERNAL
REVENUE,

BRIEF FOR APPELLANT.

See Page 22-2
R. KEMP SLAUGHTER,
HUGH C. BICKFORD,
Attorneys for Appellants.

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IN THE
Court of Appeals, District of Columbia.

APRIL TERM, 1931

No. 5429

THOMAS WILLIAMS, APPELLANT,

vs.

DAVID BURNET, COMMISSIONER OF INTERNAL
REVENUE,

AND

No. 5430

HENRY K. S. WILLIAMS, APPELLANT,

vs.

DAVID BURNET, COMMISSIONER OF INTERNAL
REVENUE,

BRIEF FOR APPELLANT.

Jurisdiction.

These cases are appeals taken March 26, 1931, to review final decisions of the U. S. Board of Tax Appeals

entered October 30, 1930 (R. 4041). The cases involving identical issues, the parties have stipulated that they be consolidated for preparation of the record and briefs and presentation of argument (R. 61). The parties, likewise, have stipulated that the appeals be heard by this Court in accordance with Section 1002 (*d*) of the Revenue Act of 1926 (R. 52).

Statement of the Case.

The appellants are brothers who maintain an office at 220 Eleventh Avenue, New York. At the beginning of the year 1919 and for many years prior thereto they had jointly owned considerable property on Staten Island, New York (R. 34). The property, located on the waterfront, extending about 2,300 feet along the water and about 1,000 feet deep, was suitable for improvement for oversea commerce and building piers (R. 63). It was not suitable for residential purposes and appellants never had any idea of using it for such purposes for themselves or their families. It was essentially business property (R. 63). A part of the property was occupied under lease by the firm of Ichabod T. Williams & Sons, a partnership, of which Thomas Williams was a partner (R. 34). This firm paid rent to the appellants for the portion of the properties used by it (R. 63). Another portion of the property was leased to the Edgewater Saw Mills Corporation, of which the appellants were stockholders (R. 34). These firms had invested funds in machinery and improvements in connection with their use (R. 67, 71, 72). Appellants as individuals had paid for buildings and improvements used by the firms (R. 74). The

improvements paid for by the firms were comparatively minor improvements. Where it was desired to put up a substantial structure or add an expensive piece of machinery that was done by appellants as owners of the property (R. 76, 77). Other portions of the property were held by the Stapleton Dock and Warehouse Corporation, a holding corporation, the capital stock of which was all owned in equal shares by the appellants (34).

On July 1, 1919, the Commissioners of the Sinking Fund of New York City instituted proceedings to condemn for public use all of the above-described property, together with other adjacent property, in connection with the improvement of the water front and harbor facilities of New York City. Pursuant to authority granted by the New York Supreme Court, the Commissioners of the Sinking Fund, on September 25, 1919, adopted a resolution reading in part as follows:

“Resolved that, pursuant to law, the Commissioners of the Sinking Fund hereby direct that title to the property to be acquired for the improvement of the waterfront and harbor of The City of New York, between Simonson Avenue, Clifton, and Arrietta Street, Tompkinsville, Borough of Richmond, as more particularly hereinafter described, shall vest in The City of New York on Saturday, October 11, 1919, and all of the rights, title and interest of any and all of the owners or persons interested in the said wharf property, rights, terms, easements and privileges, lands under water or uplands, shall cease and determine and be extinguished at such time.”

Title to the property was taken over by the city in accordance with the above resolution on October 11, 1919. On October 28, 1919, notice was given by the court for the owners and parties in interest to file with the court their claims for compensation. Thereafter, during the year 1919, claims for compensation for the condemned property were filed by the petitioners individually, by the copartnership, the holding company, and the corporation.

The appellants engaged the law firm of O'Brien, Boardman, Parker and Fox to represent them in the prosecution of their claims.

The adjudication of the claims by the courts extended over a period of several years. On March 13, 1925, the Supreme Court of Kings County rendered judgment awarding the petitioners compensation in the amount of \$3,792,090.74. Appeal from this award was taken by the City of New York to the Appellate Division, which, during the year 1926, rendered its decision approving the amount of the award as fixed by the lower court. See 215 App. Div. 204, 438. Appeal was then taken to the Court of Appeals of the State of New York, which, on July 20, 1927, rendered final decision affirming the award as fixed by the trial court. See 246 N. Y. 1; 157 N. E. 911 (R. 34-36).

In 1927 and 1928 appellants received the amount of \$5,650,215.28, which consisted entirely of the amount of compensation awarded, \$3,792,090.74 and interest thereon at 6 per cent from October 11, 1919, the date when the properties were taken, in the amount of \$1,858,124.54. No other payments were received as a result of the litigation (R. 83-5).

Counsel for the appellants, in the prosecution of their claims for compensation for the property taken under the condemnation proceedings, desired that the copartnership, the corporation, and the holding company, in which appellants were interested, make no separate contentions with respect to damages to which they might be entitled as a result of improvements which they had placed upon the property taken over by the city. Accordingly, the appellants proceeded as the parties in interest.

During the years 1921, 1922, 1924, 1925, and 1926, the petitioners made expenditures in connection with the prosecution of the above claims, all of which represented attorney's fees, appraisals, expert witness fees, court costs, and other similar expenses, as follows:

Year.	Thomas Williams.	Henry K. S. Williams.
1921	\$8,585.39	.....
1922	8,822.00	.....
1924	18,111.85	\$18,111.84
1925	5,116.01	5,116.00
1926	303.42	.....

*See P.
65, of
Recor*

(More complete explanation of the nature of these expenditures is contained in the record on pages 64 to 70 and 79 to 81.)

For 1921, 1922, and 1926, Henry K. S. Williams paid an equal amount in connection with the prosecution of the above claims, but deficiencies determined by the Commissioner against Henry K. S. Williams for those years, if any, are not involved in these proceedings.

In 1924 Mr. H. K. S. Williams had retired and was living in Europe; Mr. Thomas Williams was still engaged with the partnership Ichabod T. Williams & Sons (R. 62, 85, 86). They both retained ownership in the various companies heretofore mentioned and maintained an office, at which they employed a financial secretary, who kept the record of their investments, income and expenditures (R. 78). The books of account of appellants were kept on the cash receipts and disbursements basis and they filed their returns on that basis, claiming therein as deductions from gross income the expenses of the litigation comprising attorneys' fees, court costs, etc., hereinabove set forth in the year when the expenditures were made.

The Commissioner of Internal Revenue disallowed such expenditures as deductions, such action resulting largely in the deficiencies which he determined. Appeal duly was taken to the Board of Tax Appeals, which approved the disallowance by the Commissioner, from which decision this appeal is taken.

Designation of the Errors to be Relied Upon.

The errors assigned and to be argued are:

1. The Board of Tax Appeals erred in that there is no evidence to support its finding that certain expenses of litigation to determine compensation for property condemned were not "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business."

2. The Board of Tax Appeals erred in holding that the aforesaid expenditures are not deductible from the

gross income of petitioner in accordance with the provisions of Section 214 (a) (1) of the Revenue Act of 1921.

3. The finding of the Board that such expenditures were not business expenses properly deductible from gross income is contrary to law in that it is contrary to the uncontradicted evidence submitted in behalf of the petitioner.

4. The Board of Tax Appeals erred in entering its final decision finding deficiencies as aforesaid, resulting from the ruling that such expenditures were not deductible from gross income.

Statutes Involved.

Section 214 (a) (1) of the Revenue Act of 1921 provides:

“(a) That in computing net income there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity;”

Section 215 (a), (1), (2), and (3) provide:

“(a) That in computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses;

(2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;”

Similarly numbered sections of the Revenue Acts of 1924 and 1926 are of the same legal effect.

ARGUMENT.

I. The decision of the Board that the expenses here claimed as deductions are not ordinary and necessary business expenses is in conflict with its own decisions in other cases and with the decisions of the courts.

The decision of the Board below to the effect that the expenses here claimed as a deduction do not constitute “business” expenses was rendered by the Board despite the fact that neither of the parties in the case below made any particular issue of that theory. The Commissioner of Internal Revenue issued notices of deficiency, which are set forth in the record as parts of the original petitions filed with the Board of Tax Appeals (R. 12, 17, 29).

In the first of these letters (R. 12) the Commissioner denied deductions on the authority of Office Decision 591, published in C. B. 3, page 113. That office decision held that the cost of mandamus proceedings *which were recovered during the same year as they were paid* could not be deducted because the disbursement and the reimbursement resulted in neither loss nor gain. Upon this theory, the letter then stated: "Any costs received at date of settlement should be considered replacement of the amount expended in the collection of a due debt, and need not, therefore, be included in gross income."

In the second letter (R. 17-18) the Commissioner disallowed the expenses "since it is held by this office that such an expense represents an expenditure to be capitalized and for which reimbursement would be received in the final settlement of the case." The third letter (R. 29-30) contained the statement that "legal expenses of \$5,116.01 claimed in connection with the condemnation of certain property by the City of New York in 1919 have been disallowed in accordance with the adjustments made in previous years on your income tax returns where similar deductions were disallowed by the Bureau for the reason that they represent capital expenses." The petitions filed with the Board denied that there could be any reimbursement at the termination of the litigation and claimed that the expenditures made should be allowed as deductions. At no time during the course of the trial below, nor in the brief filed by Government counsel, was the contention made that the expenditures made in ques-

tion were not "business" expenses. In his brief filed below Government counsel admitted that they were "necessary" expenses and briefly claimed that they were not "ordinary" expenses, but nowhere was it argued that they were not "business" expenses connected with the business and business transactions of the appellants. The fact that the Board rendered its decision on a theory not contended for by the parties is here stated to explain the apparent trend of the testimony and proceedings below along other channels.

That the expenditures herein questioned are ordinary and necessary business expenses should seem too clear to admit of doubt. The record shows that the appellants have owned extensive waterfront property in Staten Island, New York, for some years prior to 1919. It shows conclusively not only that was it essentially business property, but that the appellants had actually used the property in many business ventures. At page 63 of the record the testimony of Mr. Thomas Williams is as follows:

Q. Was it essentially business property, being water front property, suitable for what purpose in the main? A. Very suitable for our purpose—it was also suitable for improvement in connection with the facilities for oversea commerce and building piers.

Q. What sort of improvements were on the property? A. We had a manufacturing establishment on the property, saw mills, warehouses, etc.

Q. Would you consider it suitable as a general proposition for residential purposes? A. No, sir.

Q. Had you at any time any idea at all of using it for residential purposes for yourself or any member of your family? A. No, sir.

Q. It is essentially business property? A. Absolutely.

The record further shows that Mr. Thomas Williams was a partner in the firm of Ichabod T. Williams & Sons, an importing firm, which leased a portion of the property from the appellants and paid rent to them for it (R. 63). The record also shows that both of appellants were stockholders in the Edgewater Saw Mills Company, which leased another portion of the property from them. Also, the entire testimony submitted to the New York Supreme Court in the condemnation proceedings was placed into the record below as evidence and two large volumes thereof have been brought to this court as original documents. The testimony therein as to the nature of the property, shows conclusively that the property was business property on the waterfront of New York Harbor and suitable only for business purposes. It could not have been other than business property and expenses expended in connection therewith could not, therefore, be other than business expenses, which we submit are allowable under the terms of Sec 214(a) (1) of the Revenue Acts of 1921, 1924 and 1926.

The limitations upon Section 214 (a) (1) which were intended to be applied by Congress are clearly shown by a consideration of the Section 215, which follows it. The latter section provides

“that in computing net income no deduction shall in any case be allowed in respect of:

(1) Personal, living or family expenses;

(2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.”

These are the limitations upon Sec. 214, (a) (1) intended by Congress and it is entirely clear that the expenditures here in question do not come within any of these restrictions. The amounts paid to attorneys, engineers and expert witnesses to prove the value of the appellant's business property were not “personal, living or family expenses.” In fact the testimony of Mr. Thomas Williams quoted above expressly negatives the idea that the property was ever intended to be used for residential or family purposes. The expenditures were certainly not paid out “for new buildings or permanent improvements” and with equal force they were not amounts “expended in restoring property”. The expenditures are not, therefore, within the restrictions upon Section 214 (a) (1) as expressly set forth in Section 215.

There are many decisions of the Board of Tax Appeals in cases involving somewhat similar expenditures which cannot be reconciled with the decision of the Board in this case. Thus, in *F. Meyer & Bro. Company v. Commissioner*, 4 B. T. A. 481, the Board con-

sidered amounts paid to an accountant in connection with a suit against the taxpayer for patent infringement. The litigation had not terminated at the time the Board of Tax Appeals heard the case. The findings of fact indicated that the payment in question had been for the services of an accountant in making an accounting *to determine the amount of damages to be paid* for the patent infringement in the event the litigation was decided against the taxpayer. The Board allowed the expenses as ordinary and necessary business expenses. In the present case the appellants were engaged in litigation to determine the amount of compensatory damages which should be paid to them by the City of New York for their business property which had been taken. The payments are analogous to those involved in the Meyer case, decided against the government by the Board.

In *O'Day Investment Co. v. Commissioner*, 12 B. T. A. 1230, the Board again held that attorneys' fees paid in defending a suit for accounting were deductible.

In the case of *Peter Frees, Jr., v. Commissioner*, 12 B. T. A. 745, the taxpayer was a subpostmaster, who also conducted a store. He voluntarily agreed to collect certain installments on Liberty Bonds, without compensation, for the Liberty Loan Committee of his city. This work was handled by two cashiers in his employment, who also worked in the store conducted by him. In 1920 it was discovered that the two cashiers had embezzled some of the funds collected for the Liberty Loan Committee. The Liberty Loan Committee threatened Frees with suit for the funds thus em-

bezzled by his employees. He retained an attorney and in 1920 compromised the matter by paying \$1,200 to the committee and also paid to his attorney a fee of \$100. While, it was manifest that he was not engaged in the "business" of collecting installments of Liberty Bonds, the Board nevertheless held that the payment was a necessary business expense and permitted him to deduct both the amount paid to the Liberty Loan Committee and the \$100 fee paid to his attorney. So in this case the Williams were not in the business of having property condemned by the city (there could hardly be such a business) but the property involved in the litigation was business property and the expenses in connection therewith were business expenses.

In the case of *Lena Hill v. Commissioner*, 8 B. T. A. 1159, the taxpayer owned a hotel property. A contractor whom she had engaged to make certain additions failed to complete his work and failed to pay the materialmen who had supplied him with materials. These materialmen filed foreclosure suits against the property. In 1921 the petitioner paid the attorney who represented her in this litigation the sum of \$1,000 and in 1923 paid him an additional sum of \$500. The Board said:

"The attorneys' fee of \$1,000 was paid not in connection with the defending, protecting or establishing of the petitioner's title or right to the possession of the property but in connection with the litigation to establish the petitioner's legal liability to pay the debts for material incurred by the contractor. We think that this amount, as well as the \$500 attorneys' fee

paid in 1923 in connection with other matters, constitutes ordinary and necessary business expense.”

In *MacMillan v. Commissioner*, 14 B. T. A. 1367, the taxpayer was an attorney. He had received a ranch from the Great Basin Sugar Company as a fee. He thereafter operated the ranch. In 1922 a party named de Rekowsky obtained a judgment of \$50,000 against the Great Basin Sugar Company, which had theretofore conveyed the ranch to MacMillan. De Rekowsky threatened to file suit against the taxpayer to have the conveyance of the ranch to him set aside. The taxpayer therefore paid him \$59,000 for the judgment and accrued interest and then spent \$3,176.41 in an attempt to find some assets belonging to the Great Basin Sugar Company from which he himself could recover the judgment. This he was never able to do. The Board allowed him to deduct the expense of attempting to find the assets.

The analogy to this case is striking. The judgment was obtained in connection with business property—the ranch. The expenses of attempting to secure payment on the claim were allowed. In the present case the appellants’ business property was taken, leaving them a claim. The expenditures in question were made in collecting that claim.

In *Kissel v. Commissioner*, 15 B. T. A. 1275, the taxpayer was a woman of substantial means who invested in stocks, bonds and other securities, and in real estate. She maintained an office and employed her son and two assistants to look after these invest-

ments. In 1923 the Bureau of Internal Revenue asserted against her an additional income tax of \$79,000, which was based on various transactions in connection with the properties in which she had invested. She disputed the claim of the Bureau of Internal Revenue and in 1923 and 1924 paid approximately \$9,000 to her attorneys for services and expenses incurred in disputing the claim of the income tax authorities. The Board said:

“We are satisfied from the evidence and from the testimony of record that substantially all of the alleged errors or inaccuracies out of which the proposed additional assessment arose which attorneys were employed to defend were not mere isolated personal transactions but were connected with the petitioner's trade or business within the meaning of Section 214 (a) (1) *supra*, and we therefore hold that the fees paid plus reimbursed expenses are deductible.”

Surely, litigation directly involving a dispute as to the amount to be paid for business property is as closely related to the business venture as a claim of the Federal Government for taxes on a sale of the business property.

In all of the foregoing cases it will be seen that the litigation involved properties which the various taxpayers had used for business purposes or were suits to determine the amount of damages resulting from

business transactions or in connection with business properties. So in this case, the property involved was business property, the litigation arose and was prosecuted directly in connection with that business property and the expenses directly resulted therefrom.

The expenditures were "ordinary and necessary", because they were the ordinary and necessary charges which would result from such litigation. As was stated by the United States Supreme Court in *Kornhauser v. U. S.*, 276 U. S. 145, referring to similar legal expenses: "And it was an 'ordinary and necessary' expense, since a suit ordinarily and, as a general thing, at least, necessarily requires employment of counsel and payment of his charges." The expenditures are business expenses because they are "directly connected with or, as otherwise stated, proximately resulted from" the business of the appellants (*Kornhauser v. U. S.*, *supra*), for, as shown by the record, their businesses had been the various business enterprises which used the very properties which were the subject of the litigation.

II. The fact that one of the appellants had retired from business does not mean that he could have no business expenses under Section 214 (a) (1).

The Board lays considerable stress upon evidence in another connection, to the effect that Mr. H. K. S. Williams had retired from active business in 1924 and 1925 and was living abroad (R. 85). The effect of the Board's holding in this respect is that be-

cause a business man retires from active day-in-day-out labor he can no longer have any business expenses. Such a holding we submit is absurd. It would mean that all retired business men would have to pay taxes on their entire gross income from their retained interests without the benefit of any deductions. The record certainly shows, however, that Mr. H. K. S. Williams retained his interest in this business property and continued to be a litigant in the proceeding arising therefrom. He was still in business as much as he could be in connection with this property and, until it was taken by the city, had collected rents therefrom and otherwise engaged in business in connection with it. The record also shows that he, as well as his brother, maintained an office in the city of New York and that they both employed a financial secretary to take care of their business transactions. He was in business in identically the same manner as the taxpayer in the case of *Biscayne Trust Co., Exec., v. Commissioner*, 18 B. T. A. 1015. In that case the findings of fact of the Board set forth the following:

“The record establishes that Phillip Ullendorff, now deceased, was never a real estate dealer or broker. He never secured the licenses which Florida real estate dealers are required to have. He engaged in the meat market business until 1918 when his health failed. From about 1911 or 1912 he had been investing in real estate and after he lost his health he engaged in no business except that of managing his own property and investments. From time to time he made deals in real estate purely

as an investor with the hope of realizing future increment in value. During 1922 and 1923 Ullendorff was in such poor health that it was necessary for him to employ A. D. Calkins to keep accounts of rentals as well as collect them and to take care of repairs, etc., on property owned by him and held for investment.”

The Board permitted the taxpayer, Ullendorff, to deduct as business expenses, under Sec. 214 (a) (1) of the Revenue Act of 1921, expenditures made by him in connection with the property held for investment. The opinion of the Board stated:

“During 1920 Ullendorff acquired, as an investment, a piece of property known as Whispering Pines. To maintain the value of the property it was necessary for Ullendorff to expend \$1,372.62 during 1921, \$980.71 during 1922, and \$919.61 during 1923, for its upkeep, care and maintenance. The trees and shrubbery planted on the property at the time he acquired it needed the constant care and attention of a caretaker. Those amounts were not expended for improvements on the property, nor were they personal expenses as determined by respondent. The said amounts expended in the said years were ordinary and necessary expenses incurred in a trade or business and as such are proper deductions from gross income in each of the respective years under section 214 (a) (1) of the Revenue Act of 1921.”

So, in this case, Mr. H. K. S. Williams may have retired from active participation in his various business ventures (the record does not show Mr. H. K. S.

Williams' age, but does show, at page 75, that his brother, Mr. Thomas Williams had been a resident of New York City for seventy-one years and was, therefore, quite advanced in years), but nevertheless he retained his interest therein through ownership and certainly is as much entitled to deduct from his business income the expenses which he was called upon to pay in connection therewith as if he had remained in harness until death. It is difficult to reconcile the present decision of the Board with the above quoted decision involving the estate of Phillip Ullendorff. In that case Ullendorff had retired from active business just as Mr. H. K. S. Williams had retired in this case. He continued his investments, however, and employed a secretary to keep account of his income and expenditures. The expenses claimed by him were in connection with his investment property and they were allowed by the Board.

We submit, therefore, that the decision of the Board, to the effect that the expenditures in question were not "business" expenses, is wrong, on the record, as a finding of fact and in error as a conclusion of law.

III. The fact that several business ventures of appellants were carried on in partnership and corporate form does not deprive the expenses of deductibility.

In the argument of the case below counsel for the Government contended that the expenditures in question were not deductible because the partnership Ichabod T. Williams & Co. and the corporation Edgewater Saw Mills Co. had paid for some improvements

on the property while used under lease and therefore had an interest in the condemnation proceedings. The findings of fact of the Board as set forth above disclosed the fact that when the appellants retained the law firm of O'Brien, Boardman, Parker & Fox to represent them in their claim against the City, such attorneys desired that the litigation be conducted only in the name of the appellants as owners of the property. As a result the partnership and the corporation were not made parties. This fact, however, we submit, has no bearing on the deductibility of the expenditures actually made by the appellants in the prosecution of their own claims. In the first place it is apparent from the record that the interest of the partnership and the corporation, while substantial, was wholly immaterial when compared with the total value of the land. On page 72 of the record the witness Mr. Thomas Williams testified:

“Q. Was that investment substantial in amount? A. It was quite a considerable amount.

Q. In excess of \$100,000? A. I should say that it was just about \$100,000.”

Again, on page 77, it was testified that these were comparatively minor improvements, that when it was desired to put up a substantial building or an expensive piece of machinery that was done by the appellants as owners of the property. The total value of the property as determined by the final award of the New York courts was \$3,792,090.74. Thus the improvements by the partnership and the corporation amounted approximately to only 1/38th of the total

value of the property. It can, therefore, easily be seen why the attorneys for appellants did not desire to burden the record with additional parties, particularly when the co-partnership and the corporation were controlled by the individuals who were the fee owners of the whole property. Likewise it should be borne in mind that both the partnership and the corporation were business ventures of the appellants.

Several cases of the Board of Tax Appeals conclusively establish that such a factor does not prevent the deduction of the expenses by the appellant. In the case of *Edward Pearce v. Commissioner*, 18 B. T. A. 447, the taxpayer was a member of a partnership engaged in the stock-brokerage business. He contributed from his personal funds to secure evidence to suppress bucket shops. Whether or not such contributions were deductible was the question before the Board. The Board said:

“The expense under consideration was not incurred or paid by petitioner’s firm and was not a partnership expense. It was incurred and paid by him as an individual. On the other hand, petitioner was not proceeding *pro bono publico*, but, so far as the record discloses, for the selfish purpose of protecting his own business, and in doing so was cooperating with the New York Stock Exchange, other private individuals, and the District Attorney. We can not see that the manner in which the money was paid, that is, whether petitioner proceeded alone or cooperated with others, changes the payment from a business into a purely personal expense. Cf. *G. T. Wofford*, 15 B. T. A. 1225. The fact remains that the bucket shops and their

central agency were suppressed and, with them, their attendant injurious effects on the petitioner's business and investments in seats on the various exchanges. Neither do we think that because, in thus protecting his business interests, petitioner did not request his partners to contribute but proceeded on his own account is, under the facts of this proceeding, material. If in his judgment independent action on his part was proper, we can not say that he was bound to refrain from action unless the partnership assumed the obligation. *One has the right to expend his individual money to protect his business interests whether such interests be in a partnership or a corporation and when the proper necessity is shown such expenditures are deductible as business expenses.* Cf. Alfred LeBlanc, 7 B. T. A. 256, and Harold Mortenson, 3 B. T. A. 300. The test is whether the expense is directly connected with or proximately resulted from petitioner's business. *Kornhauser v. United States*, 276 U. S. 145. Tried by this test we are of opinion that petitioner should be permitted to deduct the net sum of \$7,448.70 expended by him in the protection of his business." (Italics ours.)

Again, in *Potter v. Commissioner*, 20 B. T. A. 252, the taxpayer was president and manager of a hotel. He was also the owner of 1,500 shares of its common stock and 850 shares of its preferred stock of the par value of \$100 each. The corporation had a mortgage indebtedness and upon default in interest the holder of one of the notes instituted an action in the Florida courts against the hotel company and the trustee under the other mortgage for the purpose of enforcing his

mortgage lien and in addition securing an accounting receivership and removal of the taxpayer from control. The taxpayer was not even a party defendant to the litigation. Nevertheless, the taxpayer employed attorneys to resist this action and paid them \$3,000 from his own funds. The Board said:

“We think that there was a necessity that petitioner protect his interests as his interests would be vitally affected by the litigation and that he had a right to employ counsel and to deduct the expenditure as a business expense. Fees expended in suits of this character are allowed as business expenses. *Kornhauser v. U. S.*, 276 U. S. 145; *O'Day Investment Co.*, 13 B. T. A. 1230. The claim for deduction of \$3,000 for attorneys' fees is allowed.”

Both of these cases are conclusive that where the taxpayer has business interests he may deduct litigation expenses in connection therewith, regardless of whether his ownership or interests are individual or through the familiar business mediums of partnership and corporations. In the present the taxpayers had an individual interest in the property of over three and a half million dollars. Their companies were interested to the extent of one hundred thousand dollars. Certainly they had the right to expend the essential expenses they did and having spent them to deduct them as business expenses.

IV. The expenses in question were not capital expenditures.

Another argument which counsel for the Commissioner made before the Board below was that the litiga-

tion between the appellants and the City of New York was a suit in defense of title and, therefore, that the expenditures in connection therewith were capital expenditures which might not be considered as deductible expenses. We shall answer this contention although it is not necessary to go into a great deal of detail to do so.

In almost any suit where property is involved it is necessary as a preliminary and formal basis for the suit to make a *prima facie* showing of title. Thus, in even some tort actions it would be necessary to show that the plaintiff or defendant was the owner of the property involved but that preliminary element of the suit does not convert a tort action into a suit for title. The mere fact that appellants, in pressing their claim for compensation for the land condemned, made a *prima facie* showing of title does not convert the condemnation proceedings into a suit to quiet title. Even a consideration of this strained contention, however, is not necessary. We simply ask the Court to note the *time* when the *final* opinion of the judge in the New York court was rendered concerning *title* to the properties. This opinion appears on page 7275, volume 12, of the printed record of the court proceedings, which has been brought to the court as an original document. The exact date does not appear, but after deciding in whom title vested, the final paragraph of the opinion states: "The proof of *damage* will be taken on March 5, 1922, at 10 A. M. in Part II, Special Term." Accordingly the decision of the court *as to title* was rendered *prior to March 5, 1922*. After that the sole question was the determination of the

amount of damages due the parties, and practically all of the expenditures here in question were made after that date. In fact, the testimony as set forth in the statement of evidence on pages 64 to 69 of the record and the explanation of the items thereof shows that even the expenditures in 1921 prior to March, 1922, were paid to engineers and real estate experts who valued the properties for the purposes of determining damages. The litigation was not, therefore, a suit involving the acquisition or addition to property; it was a proceeding solely to determine the *amount* of the claim of the appellants. In other words, after 1919 the appellants owned a chose in action against the City of New York and they expended the amounts in question to determine the proper amount of that claim and to collect it. That they were entitled to the property or that they had owned it was never in doubt.

Conclusion.

We submit, therefore, that the expenditures in question were ordinary and necessary expenses directly connected with their businesses and business properties and proximately resulting therefrom, and are, therefore, properly deductible from gross income.

R. KEMP SLAUGHTER,
HUGH C. BICKFORD,

Attorneys for Appellants.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

Nos. 5429, ~~5430~~ - 1932

Henry W. Hodges

In the Court of Appeals of the District of
Columbia

THOMAS WILLIAMS, APPELLANT

v.

DAVID BURNET, COMMISSIONER OF INTERNAL
REVENUE, APPELLEE

HENRY K. S. WILLIAMS, APPELLANT

v.

DAVID BURNET, COMMISSIONER OF INTERNAL
REVENUE, APPELLEE

APPEALS FROM THE BOARD OF TAX APPEALS

BRIEF FOR APPELLEE

G. A. YOUNGQUIST,
Assistant Attorney General.

SEWALL KEY,
S. DEE HANSON,

Special Assistants to the Attorney General.

C. M. CHAREST,
*General Counsel,
Bureau of Internal Revenue,*

FRANK M. THOMPSON, Jr.,
*Special Attorney,
Bureau of Internal Revenue,
Of Counsel.*

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**In the Court of Appeals of the District of
Columbia**

No. 5429

THOMAS WILLIAMS, APPELLANT

v.

DAVID BURNET, COMMISSIONER OF INTERNAL REVE-
nue, appellee

No. 5430

HENRY K. S. WILLIAMS, APPELLANT

v.

DAVID BURNET, COMMISSIONER OF INTERNAL REVE-
nue, appellee

APPEALS FROM THE BOARD OF TAX APPEALS

BRIEF FOR APPELLEE

PREVIOUS OPINION

The only previous opinion is that of the United States Board of Tax Appeals (R. 37-39), which is reported in 21 B. T. A. 109.

JURISDICTION

These appeals involve income and surtaxes for the following amounts and years: No. 5429, the respective amounts of \$2,314.45, \$8,993.38, \$6,335.30, \$1,333, and \$75.89 for the years 1921, 1922, 1924, 1925, and 1926, and No. 5340, the respective amounts of \$10,238.07 and \$4,160.90 for the years 1924 and 1925, and are taken from decisions (orders of redetermination) of the United States Board of Tax Appeals entered October 30, 1930. (R. 40-41.) The cases, consolidated for purposes of appeal (R. 61), are brought to this Court by petitions for review filed March 26, 1931 (R. 43-49, 50-59), pursuant to the provisions of the Revenue Act of 1926, c. 27, Sections 1001-1003, 44 Stat. 9, 109-110, and to stipulations entered into under Section 1002 of said Act and filed March 26, 1931 (R. 42-43).

QUESTION PRESENTED

Whether the amounts paid by appellants in litigation of claims for compensation for property condemned for public uses by the City of New York constitute proper deductions as ordinary and necessary expenses incurred in carrying on a trade or business within the meaning of Section 214 (a) (1) of the Revenue Acts of 1921, 1924, and 1926.

STATUTES AND REGULATIONS INVOLVED

Revenue Act of 1921, c. 136, 42 Stat. 227:

SEC. 214. (a) That in computing net income there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, * * * and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

SEC. 215. (a) That in computing net income no deduction shall in any case be allowed in respect of—

- (1) Personal, living, or family expenses;
- (2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate.

Section 214 (a) (1) of the Revenue Acts of 1924 (c. 234, 43 Stat. 253) and 1926 (c. 27, 44 Stat. 9) are identical with the foregoing statute.

Treasury Regulations 62 (1922 Ed.):

ART. 51. *When included in gross income.*—

* * * A person may sue in one year on a pecuniary claim or for property, but money or property recovered on a judgment therefor rendered in a later year would be income in that year, assuming that it would have been income in the earlier year if then received. * * * Such items as claims for compensation under canceled Government contracts constitute income for the year in which they are allowed or their value is otherwise definitely determined.

ART. 101. *Business expenses*.—Business expenses, whether subtracted from total receipts in computing gross income or deducted from gross income in computing net income, include all items entering into what is ordinarily known as the cost of goods sold, together with selling and management expenses, * * * Among the items to be treated as business expenses are material, labor, supplies, and repairs in the case of a manufacturer, while a merchant would include his purchases of goods bought for resale. In either case the amount to be taken as a deduction in any year should be determined by taking into consideration the inventory at the beginning and end of the year. Other items that may be included as business expenses are reasonable compensation for the services of officers and employees, traveling expenses while away from home solely in the pursuit of a trade or business * * * advertising and other selling expenses, together with insurance premiums against fire, storm, theft, accident, or other similar losses in the case of a business, and rental for the use of business property. * * * A taxpayer is entitled to deduct the necessary expenses paid in carrying on his business from his gross income from whatever source. * * *

ART. 111. *When charges deductible*.—Each year's return, so far as practicable, both as to gross income and deductions therefrom, should be complete in itself, and taxpayers

are expected to make every reasonable effort to ascertain the facts necessary to make a correct return. * * * The expenses, liabilities, or deficit of one year can not be used to reduce the income of a subsequent year. * * * A taxpayer has the right to deduct all authorized allowances, and it follows that if he does not within any year deduct certain of his expenses, losses, interest, taxes, or other charges, he can not deduct them from the income of the next or any succeeding year. It is recognized, however, that particularly in a going business of any magnitude there are certain overlapping items both of income and deduction, and so long as these overlapping items do not materially distort the income they may be included in the year in which the taxpayer, pursuant to a consistent policy, takes them into his accounts. Judgments or other binding adjudication, such as decisions of referees and boards of review under workmen's compensation laws, on account of damages for patent infringement, personal injuries, or other cause, are deductible from gross income when the claim is so adjudicated or paid, unless taken under other methods of accounting which clearly reflect the correct deduction, less any amount of such damages as may have been compensated for by insurance or otherwise. * * *

ART. 293. *Capital expenditures.*—Amounts paid for increasing the capital value * * * of property are not deductible from gross

income. * * * The cost of defending or perfecting title to property constitutes a part of the cost of the property and is not a deductible expense. * * *

STATEMENT OF FACTS

The facts, as found by the Board of Tax Appeals (R. 34-37), are as follows:

The petitioners are brothers and are residents of the State of New York. They maintain an office at 220 Fifth Avenue, New York City.

At the beginning of the year 1919 the petitioners were the owners of considerable real estate situated along the water front on Staten Island, N. Y. They had owned the property for many years and had used portions of it in carrying on various business enterprises. A part of the property was occupied under lease expiring in 1923 by the firm of Ichabod T. Williams & Sons, a copartnership, hereinafter referred to as the Copartnership, of which Thomas Williams was a partner. The Copartnership was engaged in the wholesale lumber business specializing in the importation of high-grade lumber. Another part of the property was under lease, expiring in 1928, to the Edgewater Saw Mills Corporation, hereinafter referred to as the Corporation, of which the petitioners were stockholders. Other portions of the property had been transferred by the petitioners to the Stapleton Dock and Warehouse Corporation, a holding corpora-

tion, hereinafter referred to as the Holding Company, the capital stock of which was all owned in equal shares by the petitioners.

On July 1, 1919, the Commissioners of the Sinking Fund of New York City instituted proceedings to condemn for public use all of the above described property, together with other adjacent property, in connection with the improvement of the water front and harbor facilities of New York City. Pursuant to authority granted by the court, the Commissioners of the Sinking Fund on September 25, 1919, adopted a resolution reading in part as follows:

“Resolved, that, pursuant to law, the Commissioners of the Sinking Fund hereby direct that title to the property to be acquired for the improvement of the water front and harbor of The City of New York, between Simonson Avenue, Clifton, and Arrietta Street, Tompkinsville, Borough of Richmond, as more particularly hereinafter described, shall vest in The City of New York on Saturday, October 11, 1919, and all of the rights, title, and interest of any and all of the owners or persons interested in the said wharf property, rights, terms, easements, and privileges, lands under water or uplands, shall cease and determine and be extinguished at such time.”

Title to the property was taken over by the city in accordance with the above resolution on October 11, 1919, and on October 28, 1919, notice was given for the owners and parties in interest to file with the court their

claims for compensation. Thereafter, and during the year 1919, claim for compensation for the condemned property were filed by the petitions individually, by the Copartnership, the Holding Company, and the Corporation.

Prior to 1919 both the Copartnership and the Corporation had made considerable improvements upon the condemned properties out of their own funds.

The petitioners engaged the law firm of O'Brien, Boardman, Parker, and Fox to represent them in the prosecution of their claims.

The adjudication of the claims by the courts extended over a period of several years. On March 13, 1925, the Supreme Court of Kings County rendered judgment awarding the petitioners compensation in the amount of \$3,792,090.74. Appeal from this award was taken by the City of New York to the Appellate Division, which, during the year 1926, rendered its decision approving the amount of the award as fixed by the lower court. See 215 App. Div. 204, 438. Appeal was then taken to the Court of Appeals of the State of New York, which, on July 20, 1927, rendered final decision affirming the award as fixed by the trial court. See 246 N. Y. 1; 157 N. E. 911.

Counsel for the petitioners in the prosecution of their claims for compensation taken for the property under the condemnation proceedings desired that the Copartnership, the Corporation, and the Holding Company

make no separate contentions with respect to damages to which they might be entitled as a result of improvements which they had placed upon the property which had been taken over by the City. Accordingly, the claims for compensation were limited to those pressed by the petitioners. The petitioners had entered into an understanding with the other parties in interest that such parties would be compensated for out of any amounts which might be paid to the petitioners for damages in respect of the property taken.

During the years 1921, 1922, 1924, 1925, and 1926 the petitioners made expenditures in connection with the prosecution of the above claims, representing attorneys' fees, appraisals, expert witness fees, etc., as follows:

Year	Thomas Williams	Henry K. S. Williams
1921.....	\$8,585.39	-----
1922.....	8,822.00	-----
1924.....	18,111.85	\$18,111.84
1925.....	5,116.01	5,116.00
1926.....	303.42	-----

For 1921, 1922, and 1926, Henry K. S. Williams paid an equal amount in connection with the prosecution of the above claims but deficiencies determined by the Commissioner against Henry K. S. Williams for that year, if any, are not involved in these proceedings.

Thomas Williams carried on no business during the years 1921 to 1926, inclusive, except in connection with the firm of Ichabod

T. Williams & Sons, of which he was a member. Henry K. S. Williams had retired from business prior to 1924, and during the years 1925 and 1926 was living abroad.

In his income-tax returns for 1921, 1922, 1924, 1925, and 1926 Thomas Williams claimed as deductions from gross income the amounts paid by him in connection with the prosecution of his claims against the City of New York, set out above, and in his individual income-tax returns for 1924 and 1925, Henry K. S. Williams claimed as deductions from gross income in connection with the prosecution of these claims \$47,448.07 for 1924 and \$5,116 for 1925, although the amounts actually paid by Henry K. S. Williams in those years was, as above set forth, only \$18,111.84 for 1924 and \$5,116 for 1925. The reason for claiming a larger deduction for 1924 than the amount paid was that Henry K. S. Williams had claimed no deductions for the years prior to 1924, and claimed the right to deduct in that year the entire amount paid by him in 1924 and prior years. The petitioners kept their records on the cash receipts and disbursements basis and filed their tax returns upon the same basis. In the determination of the deficiencies involved herein the Commissioner disallowed the deductions of the amounts paid in connection with the prosecution of the above-referred to claims.

On the basis of the foregoing findings, the Board, affirming the Commissioner's determination (R. 11-12, 18, 29-30), held that the amounts in contro-

versy are not deductible as ordinary and necessary expenses incurred in carrying on appellants' business (R. 39). The Board thereupon entered orders of redetermination for the deficiencies for the taxable years involved. (R. 40-41.) From the orders so entered, appellants took these appeals. (R. 43, 50.)

SUMMARY OF ARGUMENT

Appellants have not proved that the expenditures incurred in protecting the contested award made for the condemnation of their property constituted, under the revenue statutes, ordinary and necessary expenses incurred in a trade or business. Only items specifically permitted by the statutes are deductible. Appellants have not brought their claims squarely within the terms thereof. Moreover, the Commissioner's regulations have consistently held that only ordinary and necessary business expenses are deductible, and not extraordinary personal expenditures such as those herein involved. Those regulations are reasonable and of long standing and therefore enjoy presumptive legislative sanction.

Appellants' expenditures were not absolutely essential in that acceptance of a smaller award would have obviated the necessity for the expenditures. Neither were they ordinary and usual such as recur in the production of the income of a business. Rather they were extraordinary and unusual. Nor were they paid or incurred in carrying on a trade or business. Only one of appellants was engaged

in business but he testified that the expenditures were made in protection of his property. In the absence of the participation of any business concerns of appellants in the condemnation award contest proceedings, it is clear that they were merely matters of personal interest to appellants. Appellants' personal expenditures in protecting their property, the award, arises from their *ownership* of the property and not from any business. Being personal expenses, they are not deductible under the statute.

Under the decisions and regulations it is obvious that the statute contemplates allowance only of taxpayer's ordinary *and* necessary operating expenses incurred in producing income. There are many cases where such expenditures have *of necessity* been made for business purposes, but not being *ordinary* expenses, they were held unallowable as deductions, and vice versa.

Appellants' personal expenditures appear to have been for the protection of and the establishment and proof of title to their property and therefore should be used as an offset in determining gain or loss in the final disposition of their property. If the City of New York had been successful in its contest questioning the validity of their title, the valuations thereof and the resulting award would have been much smaller. Appellants, however, through many witnesses and large expenses, successfully established title back to the original grant.

Such expenditures were not connected with nor disbursed for any business purposes but were purely personal.

The cases cited by appellants are clearly distinguishable. Other cases herein establish the Government's contentions.

ARGUMENT

The amounts paid by appellants in litigation of claims for compensation for property condemned for public uses by the city of New York do not, under the statutes, constitute proper deductions as ordinary and necessary expenses incurred in carrying on a trade or business

The City of New York took title to appellants' property in 1919. The latter, through counsel, filed claims for compensation for the condemned property, and in 1925 the court rendered judgment in their favor in the amount of \$3,792,090.74. Upon appeal by the City the judgment was finally affirmed in 1927. (R. 35.) One of the appellants was not engaged in business during the taxable years involved, and the other merely participated in a partnership business which occupied a small part of their property. Appellants paid out considerable sums for legal and witness fees, appraisals, etc., in connection with the litigation proceedings, and, keeping their books of account on the cash receipts and disbursements basis, deducted such amounts on their individual tax returns for the years in which paid. (R. 36.) The Commissioner disallowed such deductions (R. 37), and the

Board affirmed his action on the ground that, under the statute, the amounts claimed as deductions are not ordinary and necessary expenses paid or incurred during the taxable years in carrying on any trade or business. (R. 39.) Appellants claim these deductions as ordinary and necessary expenses of doing business. (R. 55.)

It may be noted preliminarily that there are certain well recognized principles concerning deductions under the Revenue Acts. The taxing statutes do not undertake to permit a deduction for all losses of every kind suffered by a taxpayer. Whatever deduction may be taken is solely a matter of statutory grant, for a taxpayer is not entitled, as a matter of right, to make *any* deductions from gross income. *Lynch v. Alworth-Stephens Co.*, 267 U. S. 364; *Goldfield Consol. Mines Co. v. Scott*, 247 U. S. 126; *United States v. Biwabik Mining Co.*, 247 U. S. 116; *Kentucky Tobacco Products Co. v. Lucas* (W. D. Ky.), 5 F. (2d) 723. Only such deductions as are authorized by statute are permitted. *Stanton v. Baltic Mining Co.*, 240 U. S. 103; *Von Baumbach v. Sargent Land Co.*, 242 U. S. 503; *New Creek Co. v. Lederer* (C. C. A. 3d), 295 Fed. 433. The taxpayer must assume the burden of proving that the facts bring the case squarely within the purview of the statute. *Reinecke v. Spalding*, 280 U. S. 227; *Botany Mills v. United States*, 278 U. S. 282; *Burnet v. Houston*, 283 U. S. 223. Speaking generally, the taxing statutes have been so framed

as to limit deductions to a return of capital in the form of depreciation or depletion and to losses more or less directly connected with income-producing activities. Cf. *Kornhauser v. United States*, 276 U. S. 145; *Weiss v. Wiener*, 279 U. S. 333.

Appellants must, therefore, bring their claims squarely within the terms of the statute to entitle them to deduction. The law applicable here is Section 214 (a) (1) of the Revenue Acts of 1921, 1924, and 1926, and it specifically limits deduction to (1) the ordinary *and* necessary expenses, (2) paid or incurred during the taxable year, (3) in carrying on a trade or business. The terms "ordinary" and "necessary" are cumulative, and in order for an expense to be deductible it must meet both these requirements. *Hubinger v. Commissioner* (C. C. A. 2d), 36 F. (2d) 724.

The Commissioner's regulations, interpretative of the statutes, not only require that business expenses must meet all of these three statutory prerequisites in order to qualify for deductibility, but also they define what deductions are meant by ordinary and necessary. (Arts. 101-111, Reg. 62.) It is submitted that these are reasonable regulations and should be given effect. *Universal Battery v. United States*, 281 U. S. 580; *Taylor Oil & Gas Co. v. Commissioner* (C. C. A. 5th), 47 F. (2d) 108, 109, certiorari denied 283 U. S. 862. No provision whatever is made for deduction of such expenditures, neither incurred in any trade or business nor

instrumental in producing the income thereof, as is claimed in the instant case. Moreover, it has been held that it is within the Commissioner's power reasonably "to determine what are ordinary and necessary expenses to be deducted under the law in arriving at net income." *Sterling Oil & Gas Co. v. Lucas* (W. D. Ky.), 51 F (2d) 413, 416.

Furthermore, practically identical regulations have been consistently issued under prior and later revenue acts. In no case have the statutes even remotely been so interpreted as to permit deductions for legal and related expenses paid in connection with litigation defending a contested award for compensation for condemnation of private property but not incurred in producing the income of a trade or business. (See Reg. 45, Arts. 101-111; Regs. 65 and 69, Arts. 101-112; Reg. 74, Arts. 121-132.) It is established that administrative construction is not to be overruled unless plainly wrong. *Universal Battery Co. v. United States*, 281 U. S. 580, 583; *Fawcus Machine Co. v. United States*, 282 U. S. 374, 378. Thus, the earlier and later Revenue Acts have been similarly construed by the Commissioner, and the failure of Congress to enact legislation disapproving the administrative construction imports legislative approval thereof. *Brewster v. Gage*, 280 U. S. 327, 337; *Poe v. Seaborn*, 282 U. S. 101, 117; *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488, 492. It is settled that long and unbroken departmental con-

struction plus legislative sanction thereof is binding on the courts. *Fawcus Machine Co. v. United States, supra*; *Brewster v. Gage, supra*; *National Lead Co. v. United States*, 252 U. S. 140; *United States v. Hermanos y Compania*, 209 U. S. 337.

The expenditures in controversy, paid during the taxable years involved (R. 36), were not absolutely "necessary." Appellants could have accepted an award which the City officials would have considered reasonable and thereby obviated the necessity of spending any money for litigation expenses as well as the possibility of receiving a much smaller final award at the hands of the courts in the event they failed to establish title to their property. Nor were the expenditures "ordinary" business expenses, which have been defined as regular and certain expenses necessary for the existence of a corporation or business. *Brown v. City of Corry*, 175 Pa. St. 528, 34 Atl. 854; cf. *City of Long Beach v. Boynton*, 119 Pac. 677, 679; *Fritz v. Western Union Tel. Co.*, 25 Utah 263, 71 Pac. 209, 213. Clearly the expenses disbursed by appellants in their individual capacity in contesting condemnation proceedings can be under no circumstances construed as ordinary, common, usual, or recurring in the conduct of any business. On the contrary, they clearly are extraordinary, uncommon, unusual, and of very infrequent occurrence. Therefore, it is obvious that the deductions claimed represented neither necessary *nor* ordinary expenses, much less both ordi-

nary *and* necessary as required cumulatively by the statute. *Parkersburg Iron & Steel Co. v. Burnet* (C. C. A. 4th), 48 F. (2d) 163, 166; *Hubinger v. Commissioner* (C. C. A. 2d), 36 F. (2d) 724, 726, certiorari denied *New Haven Bank v. Lucas*, 281 U. S. 741.

The remaining statutory prerequisite that the expenditures must have been paid or incurred during the taxable year in carrying on a trade or business is not met by the facts in the present case. Appellants had previously operated several corporations and a partnership engaged in various activities on their property which was condemned. The exact nature of the transaction which gave rise to the expenditures under consideration seems to be disclosed by Thomas Williams' testimony to the effect that the proceedings on the part of himself against the City were in protection of the real estate and the buildings and improvements on the property and that the expenditures were made for the same purpose. (R. 70, 75.) While during the years in question only one of the appellants was connected with a going business occupying a small portion of the property condemned, the Board nevertheless stated (R. 39) that the amounts paid by him "were not charged upon the books of the partnership and, so far as the record shows, were not intimately connected with the business of the partnership." Moreover, it would have been perfectly proper for that partnership business itself to have

interposed a defense in connection with the City's contest to the award. *Brayton v. The Cleveland Special Police Co.*, 63 Ohio St. 83; 57 N. E. 1085. The fact that such procedure was not adopted strongly indicates that the entire condemnation proceedings and resulting contest were matters of personal interest to appellants. While there are no decisions presenting precisely the same fact background, the cases demonstrate, when read in connection with the statute and the regulations promulgated thereunder, that a deductible business expenditure must be such a one as is directly and proximately connected with the carrying on of the taxpayer's trade or business. The expenditures in this case arose independently of appellants' business and was not incurred primarily because of business. The personal expense to appellants of defending their property, the award, which property had not been acquired through their business activities, relates to and arises from their personal *ownership* of the property and not from business. It was therefore purely a personal expense which, under Section 215 (a) (1), *supra*, is not deductible from taxable income.

Obviously the statute contemplates allowance only of a taxpayer's ordinary and necessary operating expenses, not extraordinary. It is settled that the regulations limit deductible expenses to the current operating expenses incurred in producing the income. *Simmons Co. v. Commissioner* (C. C.

A. 1st), 33 F. (2d) 75, certiorari denied, 280 U. S. 588. That such was the intention of Congress in enacting the law, and that the regulations of the Department carry out that intent, is borne out by the decisions. *Duffy v. Central R. R.*, 268 U. S. 55. It has been held that items properly susceptible to classification under this statutory provision must be both ordinary *and* necessary. *Parkersburg Iron & Steel Co. v. Burnet*, *supra*; *Hubinger v. Commissioner*, *supra*. Ordinary and necessary business expenses have been held also not to include the following: Expenses incurred in protecting properties from floods, *Black Hardware Co. v. Commissioner* (C. C. A. 5th), 39 F. (2d) 460, certiorari denied, 282 U. S. 841; amounts paid to persons guaranteeing leases, *King Amusement Co. v. Commissioner* (C. C. A. 6th), 44 F. (2d) 709, certiorari denied, 282 U. S. 900; expenditures made in installing improvements in a building occupied by the taxpayer as a tenant from month to month, *George H. Bowman Co. v. Commissioner* (App. D. C.), 32 F. (2d) 404; broker's commissions paid by the taxpayer in purchasing securities, *Hutton v. Commissioner* (C. C. A. 5th), 39 F. (2d) 459; amounts paid in compromise of pending suits, *Colony Coal & Coke Corp. v. Commissioner* (C. C. A. 4th), 52 F. (2d) 923; a fee paid to a real estate broker for negotiating a lease on behalf of the lessor-taxpayer, *Bonwit Teller & Co. v. Commissioner* (C. C. A. 2d), 53 F. (2d) 381; amounts paid in settlement of liti-

gation involving title to land as well as the expenses of such litigation, *Murphy Oil Co. v. Burnet* (C. C. A. 9th), *infra*; and the cost of the meals and the share of the profits paid as business expenses for 1917 where a lease provided for a monthly rental plus 50% of the profit of a restaurant during 1917 and for meals to be given to the lessor and his family during that year, *Galatoire Bros. v. Lines* (C. C. A. 5th), 23 F. (2d) 676.

Appellants contend (Br. 11-12) that the restrictive provisions of Section 215, *supra*, are limitations upon Section 214 (a) (1), *supra*, and that the expenditures here in question are deductible because they do not come within any of the restrictions. It is submitted, however, that it would be an absurd principle which would hold that all expenditures which do not specifically represent prohibited expenses are deductible as business expenses. Obviously, the Commissioner could not, under the loosest construction, be required to classify all expenditures, such as those herein involved, as allowable deductions merely because they are not included within the inhibited deductions enumerated in Section 215 (a), *supra*. Otherwise all extraordinary and unusual items regardless of their nature or amount and even though not included as deductions in Section 214 (a), *supra*, would nevertheless constitute allowable deductions, provided they are not precluded from deduction under Section 215 (a). Statutes should not be so construed as to produce absurd results (*United States*

v. *Katz*, 271 U. S. 354, 357), nor strained beyond the breaking point. (*Helen A. P. Merriman v. Commissioner* (C. C. A. 1st), Prentice-Hall Tax Service, 1932, Vol. 1, p. 417.)

Moreover, the expenditures which appellants seek to deduct seem to fall within those general costs of protecting one's property, deduction for which the revenue statutes make no allowance. Appellants themselves in their petitions to the Board stated (R. 8, 15, 26) that the amounts were expended for the proper and adequate protection of their rights growing out of their ownership of the property. Appellants' firms did not own the property nor did they pay the litigation expenses. (R. 66.) Since Thomas Williams testified that the proceedings and expenditures were in protection of their property (R. 70, 75), and the regulations (Art. 293, Reg. 62, *supra*) provide that cost of defending title to property is not deductible, it seems to follow that the amounts expended must be treated as part of the cost of the condemned property and should therefore be used as an offset against the amount ultimately received in 1927 in payment for the property in determining appellants' gain or loss upon the disposition thereof. In other words, the expenditures appear clearly to have been in the nature of and closely and inseparably related to the defense of and perfecting the title for the reason that the entire contest proceedings instituted by the City were based on appellants' alleged lack of good title to the condemned property. The local court stated

that if the City was correct in its allegation that the title held by appellants and their predecessors in fee was defective, then "the valuations upon all the property here in question were fixed entirely too high, and upon a fundamentally wrong rule of damage." *Matter of City of New York (Upper N. Y. Bay)*, 246 N. Y. 1, 13, 157 N. E. 911, 914. Appellants introduced the testimony of many witnesses to establish their title to the land in question. The record shows innumerable conflicting claims to title to the land condemned. It therefore became necessary for appellants to prove their title back to the original grant. Clearly the expenditures incurred in accomplishing this were appellants' personal expenses and were in no way connected with any trade or business.

We are not dealing with companies or businesses in the instant case, but other taxpayers—two individuals—who merely owned or controlled the businesses. The latter are not seeking the deductions and we are not concerned directly or indirectly with their several tax liabilities. The action was solely in connection with appellants' personal awards for compensation for condemnation of their property. Therefore the action did not arise out of their business, and consequently the expenses incurred as legal fees constitute their nondeductible personal expenses and were not ordinary and necessary expenses of doing business.

The Board cases cited by appellants (Br. 12-16, 18, 22-24) are distinguishable on their facts in

that they involved costs of litigation in connection with the taxpayers' legal liability to pay moneys earned in their businesses to which earnings claims had been asserted by others, or the deductions allowed were for expenses that not only grew out of, or proximately resulted from, the taxpayers' businesses, but which were solely attributable to such businesses, or the taxpayers were still in the business in which the expenditures were regularly incurred incidental to producing the income thereof.

Appellants rely (Br. 17) on *Kornhauser v. United States*, 276 U. S. 145. There a suit was brought against a practicing attorney by a former partner for certain fees received by the former for alleged services rendered while they were in business together. The fee in fact, however, comprised stock in a corporation acquired after the dissolution of the partnership and not for partnership services. The defense to the suit was successful and the Court held that the attorney's fees paid in defense of the suit against the taxpayer were incurred as a "business expense" since the suit was directly connected with the business. That case is clearly distinguishable because there was a direct relationship between the expenditures made for the attorney's fees and the taxpayer's business, whereas in the present case there was no connection whatever between the amounts paid by appellants in the prosecution of their claims against the

City and any business carried on by them during the taxable years in question.

In *Ernest E. Lloyd v. Commissioner* (C. C. A. 7th), Prentice-Hall Tax Service, 1932, Vol. 1, p. 724, it was held that attorney's fees expended by the taxpayer, an officer of a corporation, in prosecuting a successful slander suit, were not deductible by him. The suit, as in the instant case, was filed, not by the company but by one of its officers. It was prosecuted in order to protect both his reputation and the business of the corporation. The business would have suffered severely in the absence of such litigation. There the taxpayer contended that the amounts spent for attorney's fees and expenses incident thereto were ordinary and necessary expenses paid or incurred in carrying on the business and therefore deductible. The court, however, affirming the action of the Board and the determination of the Commissioner, held that although the business of the corporation was damaged, still such individual litigation expenses can not be said to be ordinary and necessary expenses incurred in carrying on a business. The court stated (pp. 725-726):

It is apparent that the Revenue Act does not permit a taxpayer to deduct from his gross income all losses sustained by him during any given year in determining his net or taxable income. Such losses or expenditures as are permitted to be deducted are purely statutory. A taxpayer, in making his tax

return, has no right to any deductions from his gross income unless such deductions are provided for by the Revenue Statute. *Lynch v. Alworth-Stephens Co.*, 267 U. S. 364. *Goldfield Consol. Mines Co. v. Scott*, 247 U. S. 126. *VonBaumbach v. Sargent Land Co. et al.*, 242 U. S. 503.

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* * * The suit was not instituted by the corporation of which he was president, but by petitioner himself. * * *

* * * had he collected the amount of the judgment, such sum would have been his own private property and would have had no connection whatsoever with his business. The E. E. Lloyd Paper Company neither profited nor lost by the suit. * * *

The expenses incurred in the prosecution of the slander suit were not ordinary and necessary expenses incurred in carrying on his business, and he was, therefore, not entitled to deduct the amount thereof in determining his net income for the year 1924, under Section 214(a). Such expenses were personal and fall within the provision of Section 215 (a).

In *Ellis v. Burnet* (App. D. C.), 50 F. (2d) 343, the taxpayer, a lawyer, attempted to deduct expenses incurred on a trip to Europe made at the instance of the American Bar Association to make a study of and report on criminal procedure and law enforcement. This Court, however, affirming the Board's disallowance of deduction, held that the expenses in no way increased his professional in-

come unless the too remote effect on the resulting enhancement of his professional prestige be considered, and stated that the item would be deductible, if at all, only by the American Bar Association in the event it had paid his expenses for the trip. Therefore, since in that case, the expenditure was disallowed even though it tended remotely to increase the taxpayer's professional reputation which, of course, should increase his income, clearly appellants' personal litigation expenditures, not even remotely connected with any of their business activities, would be all the less deductible.

In *Murphy Oil Co. v. Burnet* (C. C. A. 9th), Prentice-Hall Tax Service, 1932, Vol. 1, p. 563, it was held that an amount paid for attorney's fees in settlement of a suit against the taxpayer, alleging that it had acquired the property by fraudulent means, was not deductible from income since it represented the cost of defending title.

Lucas v. Wofford (C. C. A. 5th), 49 F. (2d) 1027, is clearly distinguishable. There legislation had been proposed which would have prohibited the sale of gas by the taxpayer and thus destroyed his business. The taxpayer engaged an attorney to work against the proposed legislation and, upon the completion of his services, paid him a fee. The court held that the expenditure for the fee constituted an allowable deduction as an ordinary and necessary business expense. That case turned upon its peculiar facts and is in no way authority for the principle that attorney's fees spent in de-

fending a contested award for condemned individually owned property, title to which was questioned and had to be proved, are deductible as business expenses even though not connected with any trade or business.

In view of the foregoing it is obvious that, under the statutes, regulations, and decisions the amounts paid by appellants in litigation of their claims for compensation for their property condemned in 1919 for public uses by the City of New York do not constitute proper deductions as ordinary and necessary business expenses incurred in their trade or business.

CONCLUSION

In view of the foregoing it is submitted that the Board's decision is correct and in accordance with law, and should therefore be affirmed.

G. A. YOUNGQUIST,

Assistant Attorney General.

SEWALL KEY,

S. DEE HANSON,

Special Assistants to the Attorney General.

C. M. CHAREST,

General Counsel,

Bureau of Internal Revenue.

FRANK M. THOMPSON, JR.,

Special Attorney,

Bureau of Internal Revenue,

Of Counsel.

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